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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904~~. 1905.

No. ~~572~~. 207.

ROBERT DEVINE, JESSE D. HUNTER, ASA HUNTER, ET AL., APPELLANTS,

vs.

THE CITY OF LOS ANGELES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED MARCH 20, 1905.

(19,673.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 18, 1905.

a Supreme Court of the United States.

ROBERT DEVINE, JESSE D. HUNTER, ASA HUNTER, LEONARD C. CLARK, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato, William Craig, John Craig, and Emily Edna Craig, by Emily Snyder, Their Guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegeber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown, Hugh Glassell and Andrew Glassell, as Executors of the Last Will and Testament of Andrew Glassell, Deceased; Hugh Glassell, Andrew Glassell, Philip H. Glassell, by Hugh Glassell, His Guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederick Mehle, Emil G. Hirsch, as Administrator with the Will Annexed of the Estate of Robert G. Rabe, Deceased; David A. Kughen, W. B. Thorne, E. A. Marshall, Albert Grover, F. W. Van Wormer, Victor Carlson, E. J. Bodwell, H. S. Spinkle, W. F. Spinkle, Triumvirate Water Company, A. S. Robinson, Marcus H. Cook, F. L. Cole, Abe Dufur, Henry Herberger, Edward A. Knapp, Colby Brown, A. W. Canfield, Gordon Bennett, Pete Purrier, L. A. Jones, Earl Anderson, W. M. Hoist, John E. Battelle, Luke Craig, H. P. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pinoges, Henry C. Hayes, Clara Hayes, Mrs. W. B. Schafer, George C. Melrose, T. D.
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Ballantyne, Henry Heide, Florence Malcom, M. J. Dolson, Josephine Doan, Day Hix Dunning, U. S. Ludwig, Jacob H. Dingman, Charles E. Patterson, Eli Doan, David J. Miller, Ezra M. Hurst, Frank W. Grow, John E. Swain, William W. Young, Paulina Gastreich, Henry Luttge, Sr., Almon S. D. Fulton, Henry Luke Comber, John T. Comber, Sarah A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Frank A. Halberg, Edward E. Condon, John L. Johnson, William H. Thompson, Richard Eustice, Alfred L. Wright, Charlotte Richter, William N. Hall, Orville Meyers, Henry Munger, Wilber Purrier, Lydia Dufur, John R. White, John T. Adamson, Martin Pupka, Albert Grover, Laura Grover, A. Richards, Evan M. Crane, Harry Nelson, William Britton, Gustave Anderson, Annie Wright, George B. Edwards, Minnie Lindgren, Edward Shively, J. M. Shively, Lena D. Buffington, Mary E. Harris, Esther Hoist, Mary C. Johnson, Martha J. Melrose, Julia E. Nicholaus, Mary N. Patterson, Jean Pinoges, William H. Thorn, R. Furrier, Charles E. Colton, Sam Gilmore, R. B. Shelton, Henry Williams, Lorenzo Pelanconi, Petra Pelanconi, Honorina P. Valla, Emil Bary, Alfred E. Hodgson, Martha A. Hodgson, Samuel W. Little, Clayton Ogier, Frank Ogier, Norman C. Bridge, H. D. Roberson,
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vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, Appellee

Transcript of Record on Appeal from the Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division.

d UNITED STATES OF AMERICA, *ss:*

To the City of Los Angeles, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 23rd day of March, A. D. one thousand nine hundred and five, pursuant to an appeal filed in the clerk's office of the circuit court of the United States, for the southern district of California, wherein Robert Devine, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato; William Craig, John Craig and Emily Edna Craig, by Emily Snyder, their guardian; Joseph

Hunter, Louis Salzegeber, Annie Salzegeber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown; Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; Hugh Glassell, Andrew Glassell; Philip H. Glassell by Hugh Glassell, his guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr,
c Christian Fluhr, Henry Nicholaus, Frederick Mohle; Emil G. Hirsch as administrator with the will annexed of the estate of Robert G. Rabe, deceased; David A. Kughen, W. B. Thorne, E. A. Marshall, Albert Grover, F. W. Van Wormer, Victor Carlson, E. J. Bodwell, H. S. Spinkle, W. F. Spinkle, Triumvirate Water Company, A. S. Robison, Marcus H. Cook, F. L. Cole, Abe Dufur, Henry Herberger, Edward A. Knapp, Colby Brown, A. W. Canfield, Gorden Bennett, Pete Purrier, L. A. Jones, Earl Anderson, W. M. Hoist, John E. Battelle, Luke Craig, H. P. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pinoges, Henry C. Hayes, Clara Hayes, Mrs. W. B. Schafer, George C. Melrose, T. D. Buffington, Henry L. Comber, David B. Wyckhoff, W. M. Beeson, Amanda Huff, M. T. Miner, Hess Brewster, Hattie Brewster, Edward Ayres, Sherman A. Roberts, Marilla F. Pratt, Harrison Harvey Davenport, Dwight Griswold, Giovanni Gai, Tropico Water Company, Christ Kraft, Adelaide Tettentill, Leona E. Engelhardt, D. McNiver, K. S. Black, Joseph Edgar Moser, Charles Edward Moser, T. T. Lewis, Titus Phillips, Mary P. Pomroy, A. Lamar, M. J. F. Stearns, Clementine Lamar, Albert Bley, John A. Harris, Isaac G. Goode, Henry Braasch, Leonard N. Lockwood, E. R. Copeland, W. J. Wood, Mary B. Goggia, William Schomp, Cassius Edmunds, James Truman, Austin Truman, Daniel M. O'Connor, A. R. Ballantyne, Henry Heide, Florence Malcolm, M. J. Dolson, Josephine Doan, Day Hix Dunning, U. S. Ludwig, Jacob H. Dingman, Charles E. Patterson, Eli Doan, David J. Miller, Ezra M. Hurst, Frank W. Grow, John E. Swain, William W. Young, Paulina Gastreich, Henry Luttge, Sr., Almon S. D. Fulton, Henry Luke Comber, John T. Comber, Sarah A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Frank A. Halberg, Edward E. Condon, John L. Johnson, William H. Thompson, Richard Eustice, Alfred L. Wright, Charlotte Richter, William N. Hall, Orville Myers, Henry Munger, Wilbur Purrier, Lydia Dufur, John R. White,
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Witness, the Honorable Olin Wellborn, United States district judge for the southern district of California, and one of the judges of the United States circuit court for the southern district of California, this 28th day of January, A. D., one thousand nine hundred and five, and of the Independence of the United States, the one hundred and twenty-ninth year.

OLIN WELLBORN,
United States District Judge for the
Southern District of California.

g [Endorsed:] No. 1121 In the circuit court of the United States ninth circuit southern district of California Robert Devine *et al. vs.* City of Los Angeles. Citation Received copy of the within citation this 28th day of January 1905 W. B. Mathews, H. T. Lee, J. R. Scott, solicitors for def't. McNutt & Hannon, Stephens & Stephens, Warren E. Lloyd, att'ys & couns. for pl'ffs Filed Jan. 28 1905 Wm. M. Van Dyke, clerk. —— ——, deputy.

1 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California, Southern Division.

No. 1121.

ROBERT DEVINE, JESSE D. HUNTER, ASA HUNTER, LEONARD C. CLARK, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato, William Craig, John Craig, and Emily Edna Craig, by Emily Snyder, Their Guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegeber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown, Hugh Glassell, and Andrew Glassell, as Executors of the

Last Will and Testament of Andrew Glassell, Deceased; Hugh Glassell, Andrew Glassell, Philip H. Glassell, by Hugh Glassell, His Guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederick Mohle, Emil G. Hirsch, as Administrator with the Will Annexed of the Estate of Robert G. Rabe, Deceased; David A. Kughen,
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1¾ *vs.*

THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.

2 In the United States Circuit Court in and for the Southern District of California, Southern Division.

ROBERT DEVINE, Complainant,
vs.
THE CITY OF LOS ANGELES, Defendant. } In Equity. No. 1121.

3 In the United States Circuit Court in and for the Southern District of California, Southern Division.

To the judges of the circuit court of the United States for the southern district of California:

Your orators, Robert Devine, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato, William Craig, John Craig and Emily Edna Craig, by Emily Snyder, their guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegeber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown, Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; Hugh Glassell, Andrew Glassell; Philip H. Glassell by Hugh Glassell, his guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W.

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Max H. Shelton, Florence A. Stough, Samuel Wilkinson, Mary A. Brown, Nina M. Thorn, Hester A. Williams, Clara Gilmore, Anna R. Goode, John C. Ostergard, Verdugo Cañon Water Company, C. E. Grotzinger, Daisy B. Grotzinger, Joseph E. Bonner, Mrs. A. M. Worthing, and John Gilmore, iin pursuance of leave of this court hereinbefore granted to file an amended bill herein, now present and file such amended bill.

6 And thereupon your orators, for such amended bill, complain of the defendant, The City of Los Angeles, and say:

I.

That they and each of them are residents and citizens of the county of Los Angeles and of the State of California;

That each of the complainants, The Triumvirate Water Company, The Tropico Water Company, and The Verdugo Cañon Water Company, is a corporation organized and existing under the laws of California;

That the defendant, The City of Los Angeles, is a municipal corporation of the State of California and a citizen of said State, instituted and organized under the laws thereof.

II.

That while your orators are owners in severalty of certain lands hereinafter particularly described, lying in the said county, State and district, their cause and grounds of complaint against the defendant, The City of Los Angeles, are common to all of them, and the claim and asserted title of the said defendant city, in respect of which this suit is brought, are common against your said orators, and the wrongful acts complained of by your orators as having been done and threatened by defendant city affect the rights and interests of your orators in common.

Wherefore, and to avoid a multiplicity of suits and to determine a common adverse claim and to remove a common cloud upon title, your orators have joined, and do join, in this, their common bill for relief.

III.

Your orator, Robert Devine, is the owner in fee simple of the following described real estate, lying in the said county of Los Angeles and State of California, to wit:

Commencing at the most northerly corner of the twelve-acre piece of land of Andrew Glassell in said ranch, said corner being on the county road known as San Fernando road; thence north-

7 westerly along said county road 2,470 feet, more or less, to land of Wm. C. B. Richardson; thence S. 48° 52′ west 940.17 feet to the strip of land of the Southern Pacific Railroad Company; thence southeasterly along said railroad company's strip of land 2,480 feet, more or less, to a point on land of Glassell; thence N.

47¼° E. 739.20 feet to the point of commencement; saving and excepting herefrom a strip of land ten feet in width along the south end hereof, which is used as a road; being fifty acres of land, more or less.

IV.

That your orators, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato, William Craig, John Craig and Emily Edna Craig, by Emily Snyder, their guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegeber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown, Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; Hugh Glassell, Andrew Glassell; Philip H. Glassell by Hugh Glassell, his guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John B. Ratcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederick Mohle, and Emil G. Hirsch as administrator with the will annexed of the estate of Robert G. Rabe, deceased, are the owners in severalty of parcels of land embraced partly within the Rancho San Rafael and partly within the Rancho Los Felis, and which several parcels together are comprised within the following particular description.

Commencing at a point on the north boundary line of the city of Los Angeles, in the county of Los Angeles, State of California, where the west line of the strip of land belonging to the Southern Pacific Railroad Company intersects the same; thence along said west line of said railroad company's strip of land northwesterly to the point of intersection of the same with the east boundary line of the Rancho Providencia, in said county; thence along said east line of said Rancho Providencia southerly to the point of intersection of the same with the north boundary line of the park of the city of Los Angeles, known as Griffith park; thence along the boundary line of said park easterly and southeasterly to the southeast corner thereof; thence along said park boundary line westerly to the point of intersection thereof with the east line of the county road known as Los Felis road; thence along said east line of said county road southerly to its point of intersection with the said north line of said city; thence along said north boundary line of said city east to the point of commencement: containing two thousand (2,000) acres of land, more or less.

V.

That your orator, David A. Kughen, owns the east ten acres of block 28 of subdivision of the Rancho Providencia and Scott tract, as per map recorded in Book 43, pages 47 *et seq.*, miscellaneous records of Los Angeles county. Also that part of lot 32 of said tract lying south of Olive avenue and containing 25 acres of land. Also lots 11, 13, 15, 17 and 19 of block 54, lots 9, 11, and 13 in block 41, and lots 14, 16, 18 and 20 of block 53, and lots 2, 4 and 6 of block 59, all in the town of Burbank, as per map recorded in Book 17, pages 19, *et seq.*, miscellaneous records of Los Angeles county.

That your orator, W. B. Thorne, owns lot 97 of said Rancho Providencia and Scott tract, with the exception of the east one acre thereof sold to L. S. Brand.

9 That your orator, E. A. Marshall, owns lot 5, block 83, of said tract.

That your orator, Albert Grover, owns lot 2, block 99 of said tract.

That your orator, F. W. Van Wormer, owns lot 5, block 84 of said tract.

That your orator, Victor Carlson, owns lots 3 and 4 in block 100 of said tract.

That your orator, E. J. Bodwell, owns lot 7 and half of lot 8 of block 109 of said tract.

That your orators, H. S. Spinkle and W. F. Spinkle, own each an undivided one-half of the west half of block 67 of said tract, with the exception of a lot 50 x 150 feet in area in said block, which lot is owned by your orator, The Triumvirate Water Company, a corporation organized and existing under the laws of the State of California.

That your orator, A. S. Robison, owns, lots 2 and 3 in block 54 of said tract.

That your orator, Marcus H. Cook, owns lots 1 and 2 of block 107 of said tract.

That your orator, F. L. Cole, owns block 27 and lots 1, 2 and 4 of block 30 in the town of Burbank, as per map recorded in Book 17, pages 19, *et seq.*, miscellaneous records of Los Angeles county.

That your orator, Abe Dufur, owns lot 87 of Fauk's replat, as per map recorded in Book 74, page 51, miscellaneous records of Los Angeles county, and also lot 2 of block 78 of the subdivision of Rancho Providencia and Scott tract hereinbefore mentioned.

That your orator, Henry Herberger, owns lots 2 and 3 of block 25, lot 6 of block 105, and lots 1 and 4 of block 14 of the subdivision of Rancho Providencia and Scott tract hereinbefore mentioned.

That your orator, Edward A. Knapp, owns block 25 of said tract.

10 That your orator, Colby Brown, owns lot 1 of block 96 of said tract.

That your orator, A. W. Canfield, owns lot 3 of block 88 of said tract.

That your orator, Gorden Bennett, owns lots 3 and 4 of block 78 of said tract.

That your orator, Pete Purrier, owns lots 1 and 2 of block 83 of said tract.

That your orator, L. A. Jones, owns the easterly one-half of block 67 of said tract.

That your orator, Earl Anderson, owns blocks 49 and 53 of said tract.

That your orators, W. M. Hoist and Esther Hoist, own lot 4 of block 86 of said tract.

That your orator, John E. Battelle, owns lot 1 in block 78 of said tract.

That your orator, Luke Craig, owns lot 4 in block 76, lot 2 in block 87, and the northeast half of lot 3 in block 87 of said tract.

That your orators, H. P. Johnson and Mary C. Johnson, own block 75 of said tract.

That your orator, Simon Fairburn, owns lots 2, 3 and 4 in block 84 of said tract.

That your orator, W. B. Sarrar, owns the southwest half of lot 3 in block 87 of said tract.

That your orator, J. Mortensen, owns lot 1 in block 76 of said tract.

That your orator, Joseph Hogan, owns lot 2 in block 76 of said tract

That your orator, J. D. Smith, owns 3 acres in the northeast half of lot 3 in block 76 of said tract.

That your orators, Rosalie Pinoges and Jean Pinoges, own lots 7 and 8 in block 85 of said tract.

11 That your orators, Henry C. Hayes and Clara Hayes, own 23.50 acres in the north half of block 69 of said tract.

That your orator, Mrs. W. B. Schafer, owns 6 acres in the northeast corner of block 49 of said tract.

That your orators, H. D. Roberson, George C. Melrose and Martha J. Melrose, own the east half of block 14 of said tract.

That your orators, T. D. Buffington and Lena D. Buffington, own the north half of block 29 of said tract.

That your orator, Henry L. Comber, owns the easterly 4.32 acres of block 63 of said tract.

That your orator, David B. Wyckhoff, owns block 52 of said tract.

That your orator, W. M. Beeson, owns 4.60 acres of block 61 of said tract.

That your orator, Amanda Huff, owns lot 37 of Watts' subdivision of a part of the Rancho San Rafael, as per map recorded in Book 5, pages 200, 201, miscellaneous records of Los Angeles county.

That your orator, M. T. Miner, owns lot 40 of said Watts' subdivision.

That your orators, Hess Brewster and Hattie Brewster, own lot 39 of said subdivision.

That your orator, Edward Ayers, owns lot 26 of said subdivision.

That your orator, Sherman A. Roberts, owns lot 35 of said subdivision.

That your orator, Marilla F. Pratt, owns part of lot 39 of said subdivision.

That your orator, Harrison Harvey Davenport, owns lot 23 of said subdivision.

That your orator, Dwight Griswold, owns part of lots 8, 9 and 10 of said subdivision.

That your orator, Giovanna Gai, owns 16 acres of lots 3 and 4 in the southeast quarter of sec. 10, township 1 N. range 14 W.

12 That your orator, The Tropico Water Company, a corporation, organized and existing under the laws of the State of California, owns 2 acres of land in the northeast corner of lot 3 of the Childs tract, as per map recorded in Book 5, page 157, miscellaneous records of Los Angeles county.

That said Tropico Water Company is engaged in the business of delivering water to its 155 stockholders for domestic and irrigating purposes upon land situated in the San Fernando valley in that portion of the Rancho San Rafael, in the county of Los Angeles State of California, described as lots 7 to 43, inclusive, of Watts' subdivision of part of the Rancho San Rafael, as per map recorded in Book 5, pages 200, 201, miscellaneous records of Los Angeles county.

Also that portion of the Rancho Eulalia in said county northeasterly of the Southern Pacific Railroad Company's right-of-way, including the townsite of the town of Tropico, in said Los Angeles county.

Also the subdivision of the Glassell tract in said Los Angeles county known as the Riverdale tract, as per map recorded in Book 54, page 41, miscellaneous records of said county.

That your orator, Christ Kraft, owns lots 11, 12, 13, 14 and 15 of Hilbish's subdivision of the south 21.82 acres of block 29 of said Rancho Providencia and Scott tract, as per map recorded in Book 23, page 25, miscellaneous records of Los Angeles county.

That your orator, Adelaide Tettentill, owns lots 16 to 22, inclusive, of said Hilbish subdivision.

That your orator, Leona E. Engelhardt, owns the easterly one-half of lot 10 of Hunter's subdivision of portion of Rancho San Rafael, as per map recorded in Book 5, page 395, miscellaneous records of Los Angeles county.

That your orator, D. McNiver, owns lot 5 of said Hunter's subdivision.

That your orator, K. S. Black, owns lot 8 of said Hunter's subdivision.

13 That your orators, Joseph Edgar Moser and Charles Edward Moser, own lot 32 of Watt's subdivision of a portion of the Rancho San Rafael, hereinbefore referred to.

That your orators, T. T. Lewis and Titus Phillips, own lots 4, 5

and 6 in block 96 of the subdivision of the Rancho Providencia and Scott tract, hereinbefore referred to.

That your orator, Mary P. Pomroy, is the owner of block 77 of said Rancho Providencia and Scott tract.

That your orator, Andrew Glassell, owns 73.75 acres in Rancho San Rafael, commencing 37 chains south 40° east from the west corner of lot 57 of the Hunter Highland View tract, as per map recorded in Book 4, page 570, miscellaneous records of Los Angeles county; thence south 40° east, 19 chains; thence south 58° west, 44.42 chains; thence north 34° 45′ west, 2.765 chains; thence north 58° east, 2.20 chains; thence north 26° 45′ west, 8 chains; thence north 37° 30′ *north*, 8.25 chains; thence north 58° east, 39.665 chains to the beginning.

Also 56 acres, commencing at the west corner of lot 57 of said Hunter's Highland View tract; thence south 40° east, 13.13 chains to center line of Verdugo road; thence southerly along said center line to northwesterly line of George Hunter's 82.25-acre tract; thence south 58° west 9.17 chains to the easterly line of the San Pedro, Los Angeles and Salt Lake Railroad Company's right-of-way; thence northerly along said easterly line to the southerly line of Samuel Hunter's 50.40-acre tract; thence 48° east 19.21 chains; thence north 33° 31′ west 20.25 chains; thence north 59° east 19.54 chains to the place of beginning.

Also 20 acres in said rancho, commencing 10.98 chains north, 58° 51′ east from the southeast corner of the Brent tract; thence north 59° east, 939.14 feet; thence north 39° 18′ west 22 chains to the southeast line of land of John W. Cook; thence southwest along said southeast line 10 chains to the San Fernando road;
14 thence southerly along the northeast line of said road to the place of beginning, except the right-of-way of the Los Angeles Terminal Railroad Company.

Also 35.2 acres, commencing 13.13 chains south 40° east from the west corner of lot 57 of said Hunter's Highland View tract; thence south *40°* east 22.87 chains; thence south 56° west 33.33 chains to the center line of Verdugo road; thence northerly along said line to the place of beginning.

Also 163 acres of land in the partition of the lands of Asa Hunter and the estate of William Hunter rancho, commencing 44.72 chains north 57° 52′ east from the northwest corner of lot 1 of said Hunter Highland View tract; thence north 39° 40′ west 4.20 chains; thence north 9° 30′ east; thence 5.22 chains; thence south 47° east; thence .60 chains; thence south 33° 28′ east 37.75 chains thence south 42° 48′ east, 2.15 chains; thence south 12° 43′ east 6.72 chains; thence south 13° 30′ west 7.30 chains; thence south 28° 30′ west 5.20 chains; thence south 50° 45′ west, 7.70 chains; thence south 71° 45′ west 2.44 chains; thence south 50° 45′ west 8.20 chains; thence south 30° west 2.66 chains; thence south 60° 15′ west, 4.30 chains; thence north 74° west 13.42 chains to the beginning.

Also 102 acres of said lands, commencing at the most southerly

corner of the Asa Hunter 102.85-acre tract; thence north 9° 30′ east 65.22 chains; thence north 47° west 7.40 chains; thence south 53° 30′ west 13.5 chains; thence south 37° west, 7.35 chains; thence south 23° 30′ east 4.28 chains; thence south 5° west, 2 chains; thence south 54° west 6.90 chains; thence south 41° west 6.80 chains; thence south 17° east, 1 chain; thence south 56° east 3.20 chains; thence south 10° west .40 chains; thence south 21° 30′ east 16.13 chains; thence south 50° 30′ west 7.23 chains; thence south 39° 40′ east 23.20 chains to the place of beginning.

15 That your orator, Susan Glassell Mitchell owns that land situated in Rancho San Rafael, commencing at the intersection of the southeast line of Rancho Santa Eulalia with the northeast line of San Fernando road; thence north 21° east 5.8 chains; thence north 28° 30′ west 20.65 chains; thence northwest 2.43 chains to Glendale avenue; thence south 15½° west 9.61 chains; thence south 41° 15′ east 19.39 chains to the beginning.

Also 132 acres in said Rancho San Rafael, commencing at the northwest corner of the Glassell and Chapman 2296.11 acre tract; thence south 28° east 20.65 chains; thence south 21° west 4.35 chains; thence south 39¼° east 8.32 chains; thence north 47° east .10 chains; thence south 39¾° east 5 chains; thence north 47° east 45 chains; thence northeast to the southerly line of Watts' subdivision hereinbefore referred to; thence south 80¾° west 66 chains to the place of beginning, being a portion of said Glassell and Chapman 2296.11 acre tract.

That your orator, M. J. F. Stearns, owns that land commencing at the northeast corner of land allotted to Pedro Verdugo in the partition of the Rancho San Rafael in the case of Chapman *vs.* Sepulveda, case No. 1621 of the files of the district court of the 17th judicial district of California; thence west 7.87 chains to a point; north 21.40 chains to a point on a line of the county road known as Ninth street in said rancho; thence east 7.87° to a point; thence south 21.40 chains to the point of commencement, containing 24 acres.

That your orators, Clementine Lamer and A. Lamer, own lots 1, 2, 3 and 4 of block 27 of said subdivision of Rancho Providencia and Scott tract.

That your orator, Albert Bley, owns the westerly 31 acres of lot 28 of said tract.

That your orators, John A. Harris and Mary E. Harris, own the southeast quarter of lot 12 of said tract.

16 That your orators, Isaac G. Goode and Anna R. Goode, own that land situated in Los Angeles county, California, and being the easterly half of the westerly half of block 47 of the sub-division of Rancho Providencia and Scott tract, in the county of Los Angeles, State of California, as per map recorded in Book 17, page 15, *et seq.*, and in Book 43, page 47, *et seq.*, miscellaneous records of said county, except a strip of land 100 feet wide reserved for the extension of Olive avenue by deed recorded in Book 715, page 168 of deeds, as shown

on the map of said tract recorded in Book 43, page 47, miscellaneous records of said county; also excepting a right-of-way over said property for laying and maintaining water ditches or pipes and a reservation of any and all artesian water that may at any time be developed on the property and not used thereon as reserved by deed recorded in Book 715, page 168 of deeds; also excepting a right-of-way along the north line of said property for a water flume, as granted by deed recorded in Book 1433, page 132 of deeds; being about ten acres, more or less.

That your orator, Henry Braasch, owns all of lots 2 and 3 in block 56, lying south of Olive avenue, in said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 9.50 acres of land.

That your orator, Leonard N. Lockwood, owns lot 1 in block 57, and all that portion of lot 2 in block 56, lying north of Olive avenue, of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 19.70 acres of land.

That your orator, E. R. Copeland, owns lot seven (7), block 83 of the Rancho Providencia and Scott tract.

That your orator, Mary B. Goggia, owns the westerly 2.59 acres of lot two (2), and all of lot one (1) of the southwest quarter of section ten (10), township one (1) north, range fourteen (14) west, and all of lot one (1) of section fifteen (15), township one (1) north, range fourteen (14) west.

17 That your orator, W. J. Wood, owns land in said Rancho Providencia & Scott tract.

That your orator, William Schomp, owns lots one (1), three (3), five (5) and seven (7) of block one (1) of Burbank.

That your orator, Cassius Edmunds, owns lot two (2), and the northeasterly five (5) acres of lot three (3) of block ninety-one (91), and lots two (2) and seven (7) of block one hundred four (104), of the Rancho Providencia and Scott tract.

That your orators, James Truman and Austin Truman, own lots 4, 5 and 6 of block 112 of said rancho and Scott tract.

That your orators, Daniel M. O'Connor and Samuel W. Little, own the north half of the southwest quarter of section ten (10), township one (1) north, range fourteen (14) west, S. B. M.

And the easterly twenty-two (22) acres of lot two (2) of said section ten (10) bounded as follows: On the northerly by the southerly line of said north half of southwest of section ten (10) on the east by the easterly line of said lot two (2) or fractional southeast quarter of southwest quarter of section ten (10), on the southerly by the northerly line of the Rancho La Providencia, on the west by a line parallel to the easterly line of said lot two (2), and far enough removed therefrom to the westward to include within the above boundaries twenty-two (22) acres.

That your orators, Hugh Glassell and Andrew Glassell, as executors of the last will and testament of Andrew Glassell, deceased, are the duly appointed, qualified and acting executors of said

Andrew Glassell, deceased; and the said Andrew Glassell had and owned in his lifetime, and his estate still owns, that real property situate in Los Angeles county, described as follows:

175.26 acres in Rancho San Rafael, commencing at the intersection of the southerly line of Watts' subdivision with the east line of section 34, township 1 north, range 13 west; thence south along the said east line to compromise line and southerly line of Glassell and Chapman 2296.11-acre tract; thence southwest
18 on the said line to Verdugo road; thence northerly on the easterly line of said road to the southerly line of Watts' subdivision; thence easterly along said southerly line to beginning.

Also 335.20 acres in said rancho, commencing at the intersection of the southerly line of Watts' subdivision with the westerly line of Verdugo road; thence southerly 80½° west, 29.90 chains; thence southwest to the San Fernando road; thence southeast along the northeast line of said road, 10 chains; north 47° east, 10 chains; thence south 39° 18′ east, 32 chains; thence north 59° east to the west line of Verdugo road; thence northerly along said westerly line of the Verdugo road, to the place of beginning;

Also, the north 5.39 acres of lot 59 of the northerly portion of the Montezuma tract;

Also, lots 1, 2, 3, 4, 5, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, the north six acres of 40, 43, 44, 45 and 47, of the southerly portion of the Montezuma tract; also, lots 7, 8, 9, 13, 14, 15, 16, 17, 21 and 22 of the northerly portion of the Montezuma tract; also, lots 1 to 8, both inclusive, of the subdivision of lot 10 of the northerly portion of the Montezuma tract; also, the southerly 19.55 acres of lot 59 of the northerly portion of the Montezuma tract;

Also, 3.14 acres commencing at the southeast corner of lot 14 of the Riverdale tract, as per map recorded in Book 51, page 41, miscellaneous records of Los Angeles county; thence north 3.91 chains; thence west 9.725 chains to the easterly line of the county road; thence southeast along said east line 4.19 chains; thence east 7.97 chains to the point of beginning, being a portion of lot 14 of said Riverdale tract;

Also, 88.67 acres of said Rancho San Rafael commencing at the southwest corner of lot 16, of said Riverdale tract; thence west 15.03 chains; thence north 50½° west, 8.85 chains; thence north 8° west 7.85 chains to the south line of land now or formerly of the
19 Crystal Springs Land and Water Company; thence east 1.61 chains thence north 25° 23′ east 1303.39 feet; thence north 3° 13′ east 749.80 feet, to the south line of land now or formerly of Giacomo Borioli; thence east 16.6 chains to the westerly line of the Southern Pacific Railroad right-of-way; thence southeast on said line 3.2 chains; thence south 39.44 chains to point of beginning;

Also, 297.09 acres in said Rancho San Rafael, being all of section 35, township 1 north, range 13 west, lying south of the south line of Watts' subdivision, and west of the Montezuma tract; and that portion of section 2, township 1 south, range 13 west, lying north of

land now or formerly of Charles Glassell and west of the Montezuma tract;

Also, 1.12 acres in said rancho bounded on the north by lot 47 of the Montezuma tract; on the east by Highland avenue, and on the south and west by lands of Charles Glassell,

Also, lot 12 of Watts' subdivision of a part of the Rancho San Rafael, as per map recorded in Book 5, pages 200–201, miscellaneous records of Los Angeles county;

Also, the north 11 acres of lot 2; north 11 acres of lot 7; the north 11 acres of lot 10; and lots 3, 4, 5, 6 and 11 of the Riverdale tract, as per map recorded in Book —, page —, miscellaneous records of Los Angeles county.

Also, 3.44 acres, being that portion of lot 14 of said Riverdale tract west of the Southern Pacific railroad;

Also, the east 2.16 acres of the north 19.50 acres, and the south .50 acre of lot 12 of said Riverdale tract;

Said executors also have a mortgage interest in lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 27, 28 and 29, 30 to 39 inclusive, and 44 to 63 inclusive, of the subdivision of the westerly portion of the Tejunga rancho, as per map recorded in Book 29, pages 51 and 52, miscellaneous records of Los Angeles county; and in 393 acres of said subdivision, commencing 41.5 chains north from the southeast corner of lot 64; thence
20 north 26.01 chains; thence south 88° 15′ west; thence north 10 chains; thence south 15° west 9.07 chains; thence south 72° 43′ west 17.88 chains; thence north 5° west 18.33 chains; thence south 85° west 12.04 chains; thence north 60° west 3.53 chains; thence north 82° west 15.50 chains; thence north 89° 30′ west 8.7 chains; thence north 55° west 10.57 chains; thence south 85° west 11 chains; thence south 41° west 13.19 chains; thence south 16° 1′ west 6.50 chains; thence south 35° east 9.39 chains; thence south 36° 45′ west 9.06 chains; thence south 19° 30′ east 9.22 chains; thence south 9° 45′ west 8.08 chains; thence south 20° 45′ west 8.02 chains; thence east 108.4 chains to place of beginning, being lot 64 of said subdivision; also, lots 26 and 1 of said subdivision.

That your orator, A. R. Ballantyne, owns that portion of lot 39 of Watts' subdivision, hereinbefore referred to, beginning at a point in the east line of Glendale avenue, distant 357.93 feet south of the northwest corner of lot 39; thence east, parallel with the north line of said lot, 386.26 feet; thence southerly, along the land of J. A. Clarke, 377.97 feet; thence westerly 218.26 feet to the southeast corner; thence northerly, along the east line, 150 feet; thence westerly, along the north line, 168 feet, to the east line of Glendale avenue; thence northerly 227.97 feet to the point of beginning.

That your orator, Henry Heide, owns lot 1 of the westerly 34.26 acres of lot 41 of said Watts' subdivision.

That your orator, Florence Malcom, owns part of lot 39 of said Watts' subdivision, beginning at a point on the westerly line of said lot, north 7° 45′ east of the southwest corner 100 feet; thence south

100 feet to corner; thence southeast along said line 782.76 feet; thence north 202.3 feet; thence westerly 734.30 feet, more or less, to the place of beginning.

That your orator, M. J. Dolson, owns that real property described as follows: Beginning at a point 11.96 chains N. 81.20 west
21 of northeast corner of the fence of the 91.80 acres of land conveyed by M. L. Wicks to W. L. English by deed dated September 29, 1883, and recorded in the office of the county recorder of Los Angeles county, California, in Book 108 of Deeds, at page 614 *et seq.*, thereof, and from said point above described running thence north 81.20 west 3.10 chains to a stake; thence south 13° west 15.10 chains to a stake; thence south 11.20 east 16.43 chains to a stake at the former corner of a fence; thence along the former line of said fence north 79¾° east 8.14 chains to a stake; thence north 10¼° west 16.49 chains to a stake; thence north 8¾° west 12.81 chains to the place of beginning, containing 21.60 acres of land, together with 130/10000 of all the water of the Verdugo cañon as partitioned by the district court of the 17th judicial district of the State of California, in and for the county of Los Angeles, in the case No. 1621, entitled A. B. Chapman *et al. vs.* Fernando Sepulveda, *et al.*, and 130/10000 of the rights of development of water in the Verdugo cañon and the necessary rights of way for conducting said water from said cañon to said northeast corner of said tract of 21.60 acres hereinbefore described, including the use of pipes so far as now laid, together with an undivided half interest in a certain cemented reservoir located on the northwestern portion of a certain tract of land conveyed by I. W. Guinn and G. W. Phelon to G. W. Phelon and adjoining the tract hereinbefore described on the east, together with right of ingress and egress to said reservoir, and the necessary right of way for conducting water from said reservoir to said tract of 21.60 acres hereinbefore described, as long as said reservoir shall be used for water storage and irrigating purposes, together with the right of way of conducting water to said reservoir on said tract of land.

That your orator, Josephine Doan, owns lots 1, 2 and 3, in block 218 of the Rancho Providencia and Scott tract, hereinbefore described.

22 That your orator, Day Hix Dunning, owns lots 1, 2, 3 and 4, in block 16 of said tract.

That your orator, U. S. Ludwig, owns lots 1, 2, 3 and 4, in block 17 of said tract.

That your orator, Jacob H. Dingman, owns the south half of the southeast quarter of the southeast quarter of section 4, township 1 north, range 14 west.

That your orator, Charles E. Patterson, owns that portion of lot 18 of Watts' subdivision, hereinbefore referred to, commencing on the southerly line of said lot 310.67 feet easterly from the southwest corner of said lot; thence easterly on said southerly line 46.46 feet; thence northerly at right angels to said southerly line 360 feet;

thence westerly at right angles 310.67 feet; thence southerly at right angles 360 feet, to the place of beginning.

That your orator, Eli Doan, owns lots 1 and 2, in block 48 of the said Rancho Providencia and Scott tract.

That your orator, David J. Miller, owns the easterly 28.30 acres of block 47 of said tract.

That your orator, Ezra M. Hurst, owns the west 30 acres of block 73 of said tract.

That your orator, Frank W. Grow, owns the westerly 10.19 acres of block 47 of said tract.

That your orator, John E. Swain, owns lot 1 of block 33 of said tract.

That your orator, William W. Young, owns lot 1 of block 94, and and lot 4 of block 108 of said tract.

That your orator, Paulina Gastreich, owns the northerly 5 acres of lot 8 of block 83 of said tract.

That your orator, Henry Luttge, Sr., owns lot 7 of block 82, and lots 2, 3, and 4 of block 101, and all of block 133 of said tract; also lots 2, 4, 6, 8, 10, 12, 14, 16, 18 and 20 of block 18 of the town of Burbank, hereinbefore referred to.

23 That your orator, Almon S. D. Fulton, owns block 126 of said Rancho Providencia and Scott tract; also 1.4 acres in Rancho San Raphael, bounded on the northeast by said block 126, on the southeast by Providencia avenue, on the southwest by Burbank, and on the northwest by block 127 of said Rancho Providencia and Scott tract; also villa lots 11, 12, 13 and 14 in the town of Burbank.

That your orators, Henry Luke Comber and John T. Comber, own lots 1 and 2 of block 63 of said Rancho Providencia and Scott tract, and lots 4, 6 and 8 of block 4 of said town of Burbank.

That your orator, Sarah A. Lane, owns lots 3 and 4 of block 95 of said Rancho Providencia and Scott tract.

That your orator, Ellen R. Hall, owns 6.24 acres commencing on the easterly line of Verdugo road 528.75 feet northerly from Third street; running thence north 12° 55′ west 325 feet; thence north 89° east 758 feet; thence southerly 512 feet; thence westerly 169.6 feet; thence north 12° 56′ west 178.75 feet; thence north 89° 25′ west 510.16 feet to the place of beginning, being a portion of lot 80 of Watts' subdivision of the portion of the Rancho San Raphael, hereinbefore referred to.

That your orator, Henry H. Hall, owns 2 acres on the easterly line of said Verdugo road, commencing 350 feet northerly from Third street; running thence northerly along said road 178.75 feet; thence south 89° 23′ east 501.16 feet; thence south 12° 56′ east 178.75 feet; thence north 89° 23′ west 501.16 feet to place of beginning, being portion of said lot 80 of Watts' subdivision.

That your orator, William H. Ginn, owns lots 1, 2, 7 and 8 of block 112, and lot 8 of block 82 of said Rancho Providencia and Scott tract.

That your orator, John Sparks, owns the Southwesterly 5.07 acres of lot 4 of block 91, and all of lot 3 of said block 91 of said tract.

That your orator, Frank A. Halberg, owns lots 6, 7, 8 and 9, of Hilbish's subdivision of the south 21.82 acres of block 29 of
24 the Rancho Providencia and Scott tract; also lot 11 of block 33; lots 11 to 16 inclusive of block 44; lots 15, 17, and 19 of block 41; the southeasterly 77½ feet of lots 18 and 20 of block 52; lot 14 of block 54; lots 23 and 25 of block 68; lots 1, 3, 5, 7 and 9 of block 40, and lots 26 and 28 of block 67 of said town of Burbank; also lot 1 of Bryant's subdivision of lots 1 and 2 of block 86 of said Rancho Providencia and Scott tract; also lots 4 and 6 of block 104, and lot 8 of block 115 of said Rancho Providencia and Scott tract.

That your orator, Edward E. Condon, owns lots 15, 16, 17 and 18 of block 1 of said town of Burbank.

That your orator, John L. Johnson, owns lot 4 of block 107, and lot 3 of block 112 of said Rancho Providencia and Scott tract.

That your orator, William H. Thompson, owns lot 5 of block 107 and lot 5 of block 108 of said tract.

That your orator, Richard Eustice, owns lot 5 of block 115 of said tract, and lots 4, 6, 14 and 16 of block 36 of said town of Burbank.

That your orator, Alfred L. Wright, owns lots 2, 3 and 4 of block 115 of said Rancho Providencia and Scott tract, and lots 9, 10, 11, 12 and 14 of block 8 of said town of Burbank.

That your orator, Charlotte Richter, owns the east 20 acres of block 73 of said Rancho Providencia and Scott tract.

That your orator, William N. Hall, owns lot 1 of block 85 of said tract.

That your orator, Orville Meyers, owns 41.92 acres, commencing at the most northerly corner of block 132 of Rancho Providencia and Scott tract; running thence southwest 36.54 chains; thence southeast 777.48 feet; thence north 26° 57′ 30″ east 356.68 feet; thence north 19° 42′ 30″ east 1,006 feet; thence 83° 37′ 30″ east 1,821 feet; thence northwest 23.79 chains to the place of beginning, being a portion of said block 132 of said Rancho Providencia
25 and Scott tract; also the northeasterly 4 acres of lot 2 of block 87 of said tract; also lots 2, 4, 6, 8, 10, 12 and 14 of block 60; lot 25 of block 65; lot 16 of block 32; lot 8 of block 44 and lot 7 of block 51 of the town of Burbank; also lot 3 of the villa lots of the town of Burbank.

That your orator, Henry Munger, owns lot 6 of block 85 of the Rancho Providencia and Scott tract.

That your orator, Wilbur Purrier, owns lot 6 of block 83 of said tract.

That your orator, Lydia Dufur, owns lot 11 of block 46 of the town of Burbank.

That your orator, John R. White, owns lots 3 and 4 of block 121 and lot 1 of block 122 of said Rancho Providencia and Scott tract.

That your orator, John T. Adamson, owns lot 2 of block 95 of said tract.

That your orator, Martin Pupka, owns lot 1 of block 114 and lot 2 of block 88 of said tract.

That your orator, Albert Grover, owns lot 8 of block 109 of said tract.

That your orator, Laura A. Grover, owns lot 9 of block 109 and lot 6 of block 106 of said tract.

That your orator, A. Richards, owns lot 2 in block 98 of said tract.

That your orator, Evan M. Crane, owns lots 3 and 4 of block 34 of said tract.

That your orator, Harry Nelson, owns lot 3 of block 62 of said tract.

That your orator, William Britton, owns the westerly 7½ acres of lot 1 of block 54 of said tract.

That your orator, Gustave Anderson, owns lot 2 of block 94 of said tract.

That your orator, Annie Wright, owns lot 7 of block 105 of said tract.

26 That your orator, George B. Edwards, owns the westerly 5 acres of lot 82 of Watts' subdivision of a portion of the Rancho San Raphael, hereinbefore referred to.

That your orator, Minnie Lindgrem, owns lot 5 in the Childs tract, hereinbefore referred to.

That your orators, Edward Shively and J. M. Shively, own lot 6 of the Childs tract, hereinbefore referred to.

VI.

That your orators, Henry Nicholaus and Julia E. Nicholaus, own lots 1 and 2 in block 81 of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 35.82 acres of land.

That your orator, Mary N. Patterson, owns block 13 of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 40.91 acres of land.

That your orators, William H. Thorn and Nina M. Thorn, own the westerly six (6) acres of lot four (4), and all of lot five (5) of the subdivision of lot forty-eight (48) of Watson's subdivision hereinbefore referred to.

That your orator, R. Furrier, owns land in said Rancho Providencia and Scott tract.

That your orator, Charles E. Colton, owns lots two (2) and three (3) of block eighty-six (86) of the Rancho Providencia and Scott tract.

That your orators, Sam Gilmore, John Gilmore and Clara Gilmore, own lot six (6) of block fifty-seven (57) of Burbank, and lots three (3) and four (4) of block forty-nine (49) of the Rancho Provi-

dencia and Scott tract; also block forty (40), lot three (3) of block four (4) and lot eight (8) of block eighty-four (84) of said tract.

That your orators, R. B. Shelton and Jennie L. Shelton, own lots one (1) and two (2) of block ninety-three (93) of the Rancho Providencia and Scott tract.

27 That your orators, Henry Williams and Hester A. Williams, own lot five (5) of block eighty-five (85) of the Providencia and Scott tract.

That your orators, Isabel Ramirez de Tononi, Lorenzo Pelanconi, Honorina P. Valla and Petra Pelanconi, own a part of the Rancho San Rafael, commencing at the intersection of the southeast line of said Rancho Providencia and Scott tract, according to said recorded map thereof, with the southern line of said Rancho San Rafael, said point of beginning being the southernmost corner of lot 7 in block 81, of said Rancho Providencia and Scott tract, according to said recorded map thereof; thence along said southeast line N. 14° E. 61.10 chains; thence S. 76° E. 50.20 chains; thence S. 14° W. 6 chains; thence S. 45° W. 63.94 chains to the dividing line between the Ranchos San Rafael and Los Feliz; and thence along the same northwesterly to the point of beginning.

That your orators, Emil Bary, Alfred E. Hodgson and Martha A. Hodgson, own a part of the Rancho San Rafael, described as lot 11 of Watts' subdivision of a portion of the Rancho San Rafael; excepting a parcel in the form of a parallelogram in the southeast corner of said lot, extending 150 feet along the east line of said lot and 586 feet along the south line of said lot from its southeast corner, and also a parcel commencing at the southwest corner of said lot and running northerly along its west line 150 feet; thence easterly and parallel with the south line of said lot, 60 feet; thence southerly and parallel with the west line of said lot 90 feet; thence easterly and parallel with said south line, 90 feet; thence southerly and parallel with said west line, 60 feet to said south line, and thence along the same westerly to the point of beginning; said tract containing 9.13 acres of land.

That your orators, Samuel W. Little and Daniel M. O'Connor, own a tract of land described as the north half of the southwest quarter of section 10, township 1 north, range 14 west, S. B. M., and the eastern 22 acres of lot 2 of said section 10, which 22
28 acres is bounded on the north by the south line of said north half of the southwest quarter of section 10, on the east by the east line of said lot 2, on the south by the north line of the Rancho Providencia, and on the west by a line parallel with the east line of said lot 2, and sufficiently distant therefrom to include within said lines the said area of 22 acres.

That your orators, Norman C. Bridge and Clayton Ogier, own lots 2, 3, and the western half of lot 4 in block 44 of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 30 acres of land.

That your orators, Norman C. Bridge, and Frank Ogier, own the

eastern half of lot 4 in block 44 of said Rancho Providencia and Scott tract, according to said recorded map thereof.

That your orator, H. D. Roberson, owns land in said Rancho Providencia & Scott tract.

That your orator, Alvira I. Clugage, owns lot 2 in block 106 of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 10 acres of land.

That your orators, Henry C. Decker and Gertrude E. Decker, own lot 4 in block 81, (excepting the northeastern five acres thereof), and the southwestern 10.10 acres of lot 5 in said block 81, of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 23.31 acres of land.

That your orator, David W. Dwire, owns a portion of the Rancho Los Feliz, described as lots 2, 3, 4, 5, 6, 7 and 8, in block 1, of Ivanhoe, according to the map thereof recorded in Book 17 of Miscellaneous Records, at pages 65 and following, in said recorder's office, containing 6 acres of land.

That your orator, Charles Forman, owns lot 215 of the Lankershim Ranch Land and Water Company's subdivision of the east 12,000 acres of the south half of the Rancho Ex-Mission of San Fernando, according to the map of said subdivision recorded in Book 31 of Miscellaneous Records, page 39, in said recorder's office; containing 30.75 acres of land.

29 That your orator, Jacob Goetz, owns lots 2 and 3 in block 9 of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 20 acres of land.

That your orator, Samuel P. Newbill, owns lot 190 of said Lankershim Ranch Land and Water Company's subdivision of the east 12,000 acres of the south half of the Rancho Ex-Mission of San Fernando, according to said recorded map thereof; containing 17.2 acres of land.

That your orator, Emily Brack, owns block 68 of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 84.66 acres of land.

That your orator, Max H. Shelton, owns block 8 of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 40 acres of land.

That your orator, Florence A. Stough, owns block 102 of said Rancho Providencia and Scott tract, according to said recorded map thereof; containing 120.99 acres of land.

That your orator, Samuel Wilkinson, owns a portion of the Rancho San Rafael, commencing in the western line of the San Fernando road at the southeast corner of lot 8 of Watts' subdivision of a portion of the Rancho San Rafael; thence along said road N. 34° 40′ W. 7.35 chains to the southeast corner of land of Dwight Griswold; thence S. 60° 20′ W., along said last mentioned land 10.865 chains to the west line of said lot 8; thence along the same S. 24° 57′ E. 6.22 chains; thence S. 65° W. 1.37 chains to the south

line of said lot 8; thence along the same N. 60° 20′ E. 11.20 chains to the point of beginning; containing 8.34 acres of land.

That your orator, John C. Oestergard, owns lots one (1), two (2) and three (3) of the Rancho Providencia and Scott tract, according to map recorded in Book 951, page 55 of deeds, records of Los Angeles county.

30 That your orator, Mary A. Brown, owns block eighty (80) of the Rancho Providencia and Scott tract.

That your orators, C. E. Grotzinger, Daisy B. Grotzinger and Joseph E. Bonner, own lot one (1) of block eighty-six (86) of said tract.

That your orator, Mrs. A. M. Worthing, owns lot one (1) of block ninety-five (95), and block eighty (80) of said tract.

That each of said complainants herein named is in possession of the respective tract of land hereinbefore alleged to be owned by him.

That your orator, Emil G. Hirsch, is the duly appointed, qualified and acting administrator with the will annexed of the estate of Robert G. Rabe, deceased.

VII.

Your orators allege that said Rancho San Rafael was granted by the government of the Kingdom of Spain, on the 20th day of October, 1784, to Jose Maria Berdugo, and further confirmed on the 12th day of February, 1789, and was thereafter held and possessed by the said grantee, his heirs and successors; that said Berdugo was, at the date of said grant, a subject of the Kingdom of Spain; that he and his heirs and successors continued such subjects until the Republic of Mexico had achieved its independence of the Spanish throne and had set up an independent government, whose dominion and authority embraced the territory now comprised in the State of California; whereupon and from said time until the American conquest of said territory, said Berdugo, his heirs and successors in title to said rancho, became and continued to be citizens of said Republic of Mexico; that at the date of said conquest by the United States of said territory and at the date of the treaty of peace and friendship made at Guadalupe Hidalgo, on the second day of February, 1848, and later ratified, exchanged and proclaimed by the President of the United States, said grantee, his heirs and successors, were

31 citizens of said Republic of Mexico and entitled to all the benefits of articles VIII and IX of said treaty of Guadalupe Hidalgo, in respect of the rights of property of such citizen, which treaty, by the terms of said articles, secured to such Mexican citizen in full measure, the title by which he held any land, whether granted by Spain or Mexico, lying within the territory ceded to the United States by the Republic of Mexico.

VIII.

That thereafter on the 21st day of October, 1852, Julio Berdugo, *et al.*, heirs and successors in title to the said Jose Maria Berdugo

filed and presented their claim before the United States commission created and instituted under the act of the Congress of the United States, approved March 3, 1851, entitled, "An act to ascertain and settle the private land claims in the State of California," praying to have their rights as such successors ascertained, settled and adjusted in and to the said Rancho San Rafael.

IX.

That thereafter on or about the 11th day of September, 1855, the said commission confirmed the said grant in the said petitioners, as heirs and successors of the said grantee, Jose Maria Berdugo, and afterwards such further proceedings were had in that behalf as resulted in said judgment of confirmation becoming final.

That thereupon a patent was issued by the United States of America, duly executed by the President thereof, to the said petitioners and claimants, whereby the title of said rancho became and was vested in fee simple in said claimants.

X.

Your orators allege that said Rancho Los Felis was granted, on the 22d day of March, 1843, by Manuel Micheltoreno to Maria Ignacia Berdugo; that said grantee at the date of the said grant was a citizen of the Republic of Mexico, and that at the date of the conquest by the United States of the territory comprised within the present State of California, and at the date of the treaty of peace and friendship made at Guadalupe Hidalgo, on the second day
32 of February, 1848, between the United States and the Republic of Mexico, and later ratified, exchanged and proclaimed by the President of the United States, said grantee was a citizen of said Republic of Mexico and entitled to all the benefits of articles VIII and IX of said treaty in respect of the rights of property of such citizens; which treaty, by the terms of said articles, secured to such Mexican citizen in full measure, the title by which she held any land, whether granted by Spain or by Mexico, lying within the territory ceded to the United States by the Republic of Mexico.

XI.

That on the 26th day of October, 1852, the said Maria Ignacia Berdugo filed and presented her claim before the United States commission created and instituted under the act of the Congress of the United States, approved March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," praying to have her right ascertained, settled and adjudicated in and to the said Rancho Los Felis; that thereafter the said commission confirmed in said grantee the title to said rancho; that thereafter, on the 13th day of January, 1857, upon appeal to the district court of the United States, for the southern district of California, the

said court confirmed the said action of the said commission and confirmed the said title in the said claimant; whereupon such further proceedings were had in that behalf as resulted in said judgment of confirmation becoming final.

That thereupon a patent was issued by the United States of America, duly executed by the President thereof, to the said petitioner and claimant, whereby the title to the said rancho became and was vested in fee simple in said claimant.

XII.

Your orators further allege that the said Rancho Providencia was granted to Vicente de la Osa by Manuel Micheltoreno, governor of the Provinces of the Californias, on the 23d day of March, 1843; that at the date of the said grant the said Osa was a citizen of
33 the Republic of Mexico and continued and was such citizen at the date of the conquest by the United States of the said territory now constituting the State of California, and at the date of the treaty of peace and friendship made between the United States and the Republic of Mexico, at Guadalupe Hidalgo, on the second day of February, 1848, and later ratified, exchanged and proclaimed by the President of the United States, and said grantee and his successors were entitled to all the benefits of articles VIII and IX of said treaty in respect of the rights of property of such Mexican citizen; which treaty, by the terms of said articles, secured to such Mexican citizen in full measure, the title by which he held lands so granted by the Republic of Mexico and lying within the territory ceded to the United States by the said Republic of Mexico.

That thereafter the said Osa granted and conveyed the said Rancho Providencia to David W. Alexander and Francis Mellus, who afterward, on the 11th day of September, 1852, filed their claim for the said rancho—being one square league—before the commission organized under the aforesaid act of the Congress of March 3, 1851, which claim was confirmed by the said commission on the 18th day of October, 1853, the action of said commission thereon being final.

That thereupon a patent was issued by the United States of America, duly executed by the President thereof, conveying to the said claimants the title in fee simple to the said Rancho Providencia.

XIII.

And your orators allege and show, that the several grants of the several ranchos hereinbefore recounted, made by the Kingdom of Spain and the Republic of Mexico respectively, did, under the laws of Spain and of Mexico, convey and carry to the grantees respectively, title to the waters and all other things within said lands without exception or reservation, and that the citizens of
34 Mexico and their successors in title who held and owned the land of said several ranchos at the date of the said treaty of

Guadalupe Hidalgo, held and owned such lands by fee simple title, and that in discharging the obligations taken upon it by the Government of the United States in the eighth and ninth articles of said treaty of Guadalupe Hidalgo, said Government of the United States did confirm, and caused to be confirmed, by and through the tribunals erected and designated for that purpose, to said grantees and their heirs, successors and assigns, titles in fee simple, and the said Government of the United States, upon such several confirmations, did, through its President for the time being, execute to said confirmees, severally and respectively, grants of such lands in fee simple absolute.

XIV.

And your orators allege that they deraign their several titles in fee, as aforesaid, in the lands hereinbefore described as belonging to them respectively, through mesne conveyances from the said persons in whom the titles respectively of the said several ranchos were, in manner aforesaid, confirmed, and to whom they were conveyed by the authority of the United States.

XV.

Your orators further show that the defendant, The City of Los Angeles, claims to be the successor in right and title to all the grants made by the Spanish and Mexican governments, severally and respectively, to the Pueblo Nuestra Senora Reina de Los Angeles.

That on the 26th day of October, 1852, the said City of Los Angeles filed, before the said commission created and instituted under the aforesaid act of the Congress of the United States of March 3, 1851, its petition and claim, wherein it set forth and recited that, by virtue of an ordinance and directions made by Governor Philipe de Neve, commandant general of the internal provinces of the west, its alleged predecessor, the aforesaid pueblo, had been founded and instituted; and further representing that said defendant city claimed sixteen square leagues of land in virtue of the general laws of Spain, and particularly of an ordinance of His Majesty the King of Spain, wherein he had provided for the establishment of the town of Pitic in Sonora, and had ordered that the provisions relative thereto, should be followed in the foundation of any new pueblos of the internal provinces of the west, of which California constituted a part; and with said petition, said petitioners set forth an alleged copy of the said royal ordinance, and the said city thereupon asked that the said sixteen square leagues might be ascertained by "taking the plaza of the city as the center and running four lines due north, south, east and west to points two leagues distant therefrom and there intersecting said points by lines drawn through them at right angles and connecting so as to form a square of four leagues each way, except on the side of the mission of San Gabriel whose lands, it is supposed, may prevent the proper exten-

sion from being taken in that direction, so that the corresponding complement of the area is claimed to be taken on the south side by extending the line thereof."

Such petition further alleged that the said lands had been granted to the pueblo as its common lands, in pursuance of the policy and object of the Spanish government to encourage in California the increase of cattle and horses; that as the fruits of that policy, the settlers of the pueblo had become, and were then, large stock owners and necessarily needed such common lands as had been granted them, for the pasturage of their herds.

It was further alleged in said petition that about five square leagues of said tract of land were then covered by the houses, gardens and farming lots of the city, and that the remaining quantity of land claimed, was barely sufficient to afford pasturage to the horses and cattle belonging to the inhabitants, because of its sterility and the absence of water.

XVI.

That thereafter, on February 5, 1856, said commission, as-
36 suming jurisdiction to act upon such claim, entered an order in form confirming the claim set up in said petition as to four square leagues of the lands so claimed, but denied and rejected the said claim as to the other twelve square leagues, and thereafter such proceedings were had and taken as resulted in the action of such commission becoming final.

XVII.

That thereafter, on the 9th day of August, in the year 1866, a patent was issued by the United States under the hand of the President thereof, Andrew Johnson, and was delivered to the said city, wherein it is recited that the claim of the city to the lands granted, was founded upon the Mexican grant to the said city made on the 25th day of August, 1844, by Manuel Micheltoreno, then governor of the department of the Californias; that said patent did purport to grant and convey to the City of Los Angeles the said four square leagues and did describe the same by metes and bounds, but no reference was made in the said patent, or in any of the proceedings upon which the same was based, to the Los Angeles river or to the waters of the Los Angeles river, either by express words, or by implication, and the said patent did not convey nor purport to convey any of the said waters of the said river, that said patent was thereupon duly recorded in the proper books of such patents, in the General Land Office of the United States.

XVIII.

That thereafter, on the 4th day of August, 1875, another patent was signed by the United States, under the hand of the President, U. S. Grant, purporting to convey to the defendant city the same

lands described as granted in said former patent of August 9, 1866, and none other; that said later instrument contained no grant of the Los Angeles river to the said city, nor did it contain any grant of any waters whatsoever, or of any lands other than those contained in the said former patent of August 9, 1866.

37 Your orators, therefore, show that said later instrument is and at all times has been, ineffective for any purpose, for that the President had no lawful authority to issue such patent, or if such authority ever existed in the President, it had already been exhausted by the execution of the patent of August 9, 1866.

XVIII*a*.

That said defendant city claims the paramount right to the waters of said Los Angeles river and the river itself by virtue of grants, laws, usages and customs of the Republic of Mexico and the Kingdom of Spain made and in vogue prior to the cession of the territory embraced within the State of California to the United States of America, under said treaty of Guadalupe Hidalgo, dated February 2, 1848, and by virtue of certain acts of the legislature of California hereinafter referred to and especially by virtue of an act of the legislature of the State of California, passed April 4, 1850, in words and figures as follows:

"The people of the State of California, represented in senate and assembly, do enact as follows:

§ 1. All that tract of land included within the limits of the pueblo de Los Angeles, as heretofore known and acknowledged, shall henceforth be known as the City of Los Angeles, and the said city is hereby declared to be incorporated according to the provisions of the act entitled 'An act to provide for the incorporation of cities,' approved March 18, 1850. Provided, however, that if such limits include more than four square miles, the council shall, within three months after they are elected and qualified, fix by ordinance the limits of the city, not to include more than said quantity of land, and the boundaries so determined shall henceforth be the boundaries of the city.

§ 2. The number of councilmen shall be seven; the first election of city officers shall be held on the second Monday of May next.

§ 3. The corporation created by this act, shall succeed to
38 all the rights, claims, and powers of the Pueblo de Los Angeles in regard to property, and shall be subject to all the liabilities incurred, and obligations created, by the ayuntamiento of said pueblo."

That said defendant city never procured confirmation of or had ascertained or settled, under said act of Congress of March 3, 1851, hereinbefore recited, any rights of said Pueblo de los Angeles, or of itself as its successor, in or to the waters of said Los Angeles river, or in and to the Los Angeles river itself, other than such as are implied without mention in the confirmation and patent of the

pueblo lands as hereinbefore set out; and your orators allege that said defendant city as successor to said pueblo is not now the owner of any right or rights formerly owned by said Pueblo de Los Angeles in the waters of the Los Angeles river or the river itself, other than such as passed under said grant of land confirmed to said defendant by said patent.

Your orators further show and allege that said act of the legislature of the State of California, passed April 4, 1850, and certain further acts of said legislature and proceedings, acts and charters of said defendant city, hereinafter set forth, are a cloud upon the titles of your orators to their said riparian lands, and grievously affect and hinder your orators in the use, enjoyment and sale of the same.

XIX.

The Los Angeles river in its natural course runs in a southerly direction through the said Providencia rancho and the San Rafael rancho, and thence through the said Los Felis rancho, and thence partly through the city of Los Angeles. That the said Ranchos Providencia, San Rafael and Los Felis are riparian to the said stream, and the several tracts of land of the plaintiffs herein are, in virtue thereof, also riparian to the said stream.

That underlying each and all of the several tracts of lands belonging to the several plaintiffs herein, are waters at varying dis-
39 tances below the surface of the earth, which said waters do not flow as a stream, but are oozing and percolating in the land, and while so oozing and percolating in said lands, do not constitute any part of the waters of the Los Angeles river. And under and by virtue of the said patents and mesne conveyances hereinbefore referred to, said waters belong to the several plaintiffs by reason of their several ownerships in the said land. Said waters so existing in said lands are of great value to the several owners of said lands by reason of the fact that by pumping they can be brought to the surface of the land, and there used for the irrigation of valuable crops, which are and may be produced upon the said lands, and which, without the said waters, cannot be produced. Said waters so existing in said lands are necessary to the plaintiffs in the ownership, use and cultivation of their several lands, for the irrigation thereof, and are also necessary to those of the plaintiffs who reside upon the said lands for domestic use.

Of the above-named plaintiffs, the following, Tropico Water Company, a corporation; Edward Ayers, Triumvirate Water Company, a corporation, A. S. Robinson, F. L. Cole, Henry Herberger, —— Napp, George C. Melrose, A. Lamer, Victor Carlson, H. S. and W. F. Spinkle, Simon Fairburn, Charles Patterson, Albert Bly, —— Buffington, John A. Harris, D. J. Miller, E. M. Crane, Isaac G. Goode, Frank W. Grow, P. Purrier, E. N. Hearst, H. P. Johnson, —— Swain, —— Braasch, —— Lockwood, —— Hall, John Sparks, Isabel R. de Tononi, and Daniel M. O'Connor, have bored wells and erected pump-

ing plants upon their several tracts of land, and are severally using the waters which they are pumping from the said lands for domestic and irrigating purposes, and thus producing valuable crops, and without the use of said waters said crops could not be produced.

XX.

And your orators further show that while in its said petition to the said commission for the confirmation of its said grant from the Spanish government, the said defendant neither made nor
40 asserted any claim to the waters of the Los Angeles river or to said river itself, either by virtue of any express grant from said government, or from the government of the Republic of Mexico, or in virtue of any policy of said governments, or either of them, or in virtue of any customary law of said governments, or either of them; and while in confirming its said grant of the four square leagues of land, the said commission, in its finding and judgment, made no mention, finding or judgment in respect of said Los Angeles river or its waters, or the waters of its tributaries, yet, nevertheless, the said defendant city, its officers and agents have claimed in the past, and do now claim that said city is the owner of the Los Angeles river and of all the waters of the said river, and all the waters of its tributaries, passing through the said ranchos above described, and all the waters of the said river from its sources of supply to the southern boundary limits of the said city, and also all the waters percolating and existing in the lands of the plaintiffs as hereinbefore set forth, claiming the waters under the lands of the said plaintiffs, although the same do not constitute any stream, and are, strictly speaking, percolating waters only; and they do further claim that the plaintiffs herein have no right to pump the waters under their said lands, because the same might ultimately have the effect of reducing the supply in the surface and subterranean river, although the waters under the plaintiffs' lands are percolating, and do not flow by any defined or other channel into the surface waters of said river and do not constitute any part of the surface flow of said river. And the said city, its officers and agents, assert and claim the right at any time when the water is needed by the said city or its inhabitants, within the present enlarged boundaries, to take said waters and appropriate the same to its uses, and at the same time the said city, its officers and agents, deny your orators' right to any part of the surface water of said river, and they also deny your orators'
41 right to pump any of the said percolating waters for use upon their own lands, or for domestic uses, except subordinate to the said alleged paramount claim and right of the said city and its inhabitants to take and use the same.

And the said city claims the right to prevent the plaintiffs from the use of any part of the said water, and does threaten, as your orators are advised and believe, and are about to prepare and intend to file in the State courts of the State of California, a complaint, and

institute an action for the purpose of enjoining these plaintiffs severally from using any part of the waters by them pumped from their several wells and used upon their said several tracts of land.

XXI.

That said defendant city rests its right and claim to said river and to the waters thereof and to the waters in the lands of your orators respectively and to all the waters within the valley of said river from its source or sources to the southern line of said city—

First. Upon a construction of the said treaty of Guadalupe Hidalgo and upon a construction of the act of the Congress of March 3, 1851, and especially upon such construction of sections 8, 11, 13 and 14 of said act, which construction is to the effect and intent that whatever rights the laws, customs and polity of the Spanish and Mexican governments bestowed upon pueblos, the defendant city, as successor to the pueblo established by the Spanish government and alleged to have been later recognized by the Mexican government, especially in respect of the waters of the adjacent river and in respect of the river itself, are still possessed by said defendant city, although the said section 13 of said act of the Congress provides, "that all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be valid by the district or supreme court, and all lands, the claims to which shall not have been presented to the said commissioners
42 within two years after the date of this act, shall be deemed, held and considered as part of the public domain of the United States;" and although said city, in its petition to said commission, made no claim on account of any grant or any law, customary or statutory, or any public polity of either government from which said grant of any right to the said river or its waters could be inferred or derived except such rights thereto as were incident to any and all grants upon water courses.

Second. Said city further rests its said claim to said river and its waters and the waters of the valley of said river, as hereinbefore set forth, upon certain laws enacted by the legislature of the State of California and upon certain ordinances and charters enacted and adopted by the said city and approved by the said legislature; which legislative acts and which ordinances and charters were passed, enacted, ordained and approved because and in pursuance of such erroneous construction of said treaty of Guadalupe Hidalgo and of the said act of the Congress of the United States, approved March 3, 1851, and especially in pursuance of such erroneous construction of the said 8th, 11th, 13th and 14th sections, and of each of said sections, of said act; which erroneous construction is to the effect and intent set forth hereinbefore in this paragraph.

XXII.

That said acts of the legislature of the said State of California and said ordinances and charters ordained and enacted by said defendant city and approved by the legislature of said State, are as follows:

First. An act of the legislature approved March 26, 1874, entitled, "An act to amend the charter of the city of Los Angeles to define its limits and rights, to enlarge its powers, and to provide for its more efficient government."

That section 1 of article II of said act is as follows:

43 "That there be and hereby is granted to said corporation, to be by it held, used, and enjoyed in absolute ownership, the full, free, and exclusive right to all of the water flowing in the river of Los Angeles at any point from its source or sources to the intersection of said river with the southern boundary of said city; also the right to develop, economize, use, and utilize all waters flowing beneath the surface in the bed of said river at any point or points between the points of termini above given, and for that purpose it is hereby declared that the powers to condemn property outside of the limits of said city, given by the provisions of section two, article two, of this act, in so far as the same relate to the condemnation of property in water for increasing the water supply of said city, are intended to be given, and to be restricted to such sources of supply and to the rights therein, excepting and reserving from the operation of the aforesaid grant of the water flowing in said river, unless the same be condemned and taken for public use as herein provided, all vested private rights to the water flowing upon the surface or beneath it, in the bed of said river; *and provided*, that said corporation shall not in any manner dispose of, transfer, or convey any portion of said water, or any right to develop or use the same, or any portion thereof, to any corporation, association, individual, or other person who might or would use the same in any way prejudicial to the use thereof for irrigation within the limits of said city, or who might or who would at any time, for any good or valuable consideration, desire to sell, or in any way dispose of to any other person, natural or artificial, any interest therein or right to the use thereof; *and, provided further*, that the zanjas which are within the limits of said city, known as the principal zanja and zanjas number one, two, three, four, five, six, seven, and eight, are hereby declared public zanjas; and the quantity of water which has heretofore generally flowed in each one of said zanjas is hereby declared to be the quantity which by right belongs to each one of

44 said zanjas, and to the farmers and fruit growers who are benefited by their use. Any person or persons who shall throw, or cause to be thrown, any filth or matter detrimental to the public health or allow their sewers or sinks to run or drain into any of said zanjas, shall be deemed guilty of a misdemeanor, and upon conviction thereof before the mayor or any court having jurisdiction

thereof, shall be fined in a sum not exceeding one hundred dollars and not less than twenty dollars, for the first offense; and not more than three hundred dollars nor less than fifty dollars for every subsequent offense, or by imprisonment in the county jail for not more than thirty nor less than five days, or by both such fine and imprisonment. Any person violating this section shall be prosecuted before any court of competent jurisdiction in the city or township of Los Angeles, upon the complaint of any person aggrieved, or of the overseer of watercourses of said city. All moneys collected as fines under the provisions of this act, shall be paid into the city treasury of said city, to the credit of the water fund of said city, known as the new water fund."

Second. An act of the legislature approved April 1, 1876, entitled, "An act to revise the aforesaid act of 1874," etc.

That by said last-mentioned act, the said legislature assumed to grant to the defendant city the same rights, in the same terms, as contained in the said section 1, article II of said act of March 26, 1874.

Third. An act of said legislature approved March 30, 1878, entitled, "An act to amend said act of April 1, 1876;" by section 1 of article II of said act, the said legislature, by the same terms as employed in the said act of 1874, again assumed and purported to grant to defendant city, the said Los Angeles river, with powers in said city to control the development and distribution of the waters of the said river; omitting, however, the exceptions contained in said prior acts in favor of vested private rights in the waters of said river.

45 That the ordinances and charters ordained, enacted and adopted by the said city and approved by the said legislature of the State, are as follows:

First. The charter of said city prepared and proposed by a board of freeholders elected in the year 1888, in pursuance of provisions of the constitution of the State of California, then in force, and which proposed charter was submitted to the people of the city of Los Angeles, and by them adopted, and was thereafter submitted to the legislature of the State of California, as in the constitution provided, and was, by the joint action of the two houses of said legislature, duly approved on the 31st day of January, 1889, as the charter of the city of Los Angeles, and said charter did thereupon become the organic law of said city, a copy thereof, certified by the mayor of the said city of Los Angeles and authenticated by the seal of said city, setting forth the submission of said charter to its electors and its ratification by them, was made in duplicate, and one deposited in the office of the secretary of state of the State of California, and the other recorded in the office of the recorder of deeds of the county of Los Angeles, State of California, and thereafter deposited among the archives of the city of Los Angeles, to be thenceforward, by the terms of the constitution of said State, taken judicial notice of by all the courts of said State.

Section 190, article XVIII of the said charter, is in the words and figures following, to wit:

"The City of Los Angeles shall continue in the ownership and enjoyment of all rights to the water of the River Los Angeles heretofore vested in it, its predecessor or predecessors, including the pueblo of Los Angeles, and is hereby declared to have the full, free, and exclusive right to all the water flowing in the said river at any point from its source or sources, to the intersection of said river with the southern boundary of said city, and also the ownership of and the
46 right to develop, economize, control, use, and utilize all waters flowing beneath the surface in the bed of said river at any point or points between the points of termini above named." (Stats. of 1889, pp. 502–503.)

In the year 1902, in pursuance of the said provision of the State constitution, a body of freeholders was elected by the electors of the said city, for the purpose of preparing and proposing amendments to the said charter adopted as herein last before said; that such board did prepare and propose to the electors of said city, certain amendments of said charter, and the same were in due form submitted to the electors of said city, to be voted upon at the general municipal election held on the first day of December, in the year 1902, at which election the said amendments were duly adopted, more than three-fifths of the qualified electors voting at said election, having voted in favor of the same; that thereafter the said amendments were submitted to the legislature of said State, and were, by a joint resolution of the senate and assembly thereof, duly enacted and passed and duly approved on the 30th day of January, 1903, ratified and approved, and thereupon became, and have ever since been in full force and effect as parts of the charter of the said city of Los Angeles.

That said section 190 of article XVIII, in the language hereinabove quoted, was again re-enacted by the said city and approved in manner aforesaid, by the said legislature of the State.

And by the further amendments of said charter, adopted and approved as aforesaid, a department known and named "Water department" was instituted and organized and given jurisdiction to "manage and control all waters, water rights and water-bearing lands, and all water works, reservoirs, zanjas and ditches, belonging to the city."

XXIII.

Your orators allege that under the said several acts of the legislature and the said charter and the amendments thereof, the defendant city, through its officers and agencies constituted for that
47 purpose, have asserted, do assert, and have assumed the right to take physical management and control of the Los Angeles river and its tributaries, and the waters of the said valley, and has through said agencies, asserted and exercised the right and authority to obstruct ditches and other conduits erected and maintained

by owners of lands in the said valley of the said river, above the said city, and so to prevent the use of the waters of said river by the inhabitants of said valley in irrigating the lands belonging to complainants herein and others; which said laws, charters and the said assertion and exercise of power and authority to control, at its pleasure, the waters of the said valley, for the purpose of conserving them for the uses of the said city and its inhabitants, have resulted in the destruction of the values of complainants' lands and of each part and parcel thereof.

XXIV.

Your orators submit and allege that said acts of the legislature of said State of California, and the said ordinances and charters of the said defendant city, hereinbefore recounted, recited and set forth, are in violation of the fourteenth amendment of the Constitution of the United States, in that, they deprive, or attempt to deprive, your orators severally of their property, without due process of law, and to grant to, and confer upon, said defendant city, the right and title thereto.

And said acts and said ordinances and charters impair the obligation of the several contracts made through and by the several patents executed by the United States to the said several predecessors in title of your said orators.

And said several acts of said legislature and of said defendant city, including the charters of said city hereinbefore set forth, and including also the ordinances of said city under which a department of said city has asserted and exercised the right and authority to take physical control and possession of the said Los Angeles river and the waters thereof and of its tributaries, and under
48 which asserted right and authority the said city, through its said agencies, has interfered with the rightful use by your orators of the lands severally held and owned by them, and of the waters therein, and of the waters of said river, are in violation of section 1979, title XXIV of the Revised Statutes of the United States, in that the said defendant city, under color of said statutes of the State of California, and under color of said charter provisions and of the ordinances aforesaid, has subjected, and caused to be subjected, your orators to the deprivations of property rights, privileges and immunities secured to them by the Constitution and laws of the United States.

XXV.

Your orators further allege that notwithstanding all the foregoing acts of the said city, and notwithstanding the said laws enacted by the legislature, after the said pretended confirmation by the said commission instituted by the act of the Congress of March 3, 1851, of the title of defendant city in and to the said four square leagues of land, and the issuing of the patent, as aforesaid, the said city never, at any time, held or professed to hold, the said lands, or

any part thereof, in trust for the inhabitants of said city, but held, and professed and still professes to hold, the said lands as owner and proprietor thereof, in its own right as a municipal corporation; that thereafter none of such lands was allotted or assigned to the inhabitants, or any of them, according to the "Plan of Pitic," or according to any other rule, law or regulation established by either the Spanish or Mexican government; but the same were sold from time to time to all comers, whether they were inhabitants of the said city or of said land, or strangers and new-comers thereto; nor in making such sales, or any sale, did the said defendant city undertake or agree to furnish such lands, when sold, with water from the Los Angeles river, or from any other source, upon any terms or conditions whatsoever; that said city has never, at any time, made
49 any provision whatsoever to furnish such waters, upon any notion or theory, or upon any undertaking or agreement based upon such notion or theory, that the waters of the Los Angeles river were in any way appurtenant to the lands so confirmed and so held and sold by defendant city; said city's claim being that it has the right to take the said waters, as owner thereof, and sell them to its inhabitants.

XXVI.

Your orators allege further, that the construction hereinbefore shown to have been placed upon the act of the Congress of the United States of March 3, 1851, and upon the certain sections thereof mentioned, is contrary to justice and equity, and to a right and proper construction thereof, which right and proper construction, your orators humbly submit, is, that upon whatever the claimant to title to lands derived from Spain or Mexico, may have relied, whether upon an express grant or upon a grant implied by the general polity or by the customary law of the Spanish or Mexican governments, such claimant must have presented his petition, setting forth the grounds of his claim, and the confirmation of such claim must have proceeded upon such ground; and, so, your orators show that the construction of the act of March 3, 1851, insisted upon by defendant city, is erroneous, and that a sound and reasonable construction of said act will secure your orators in their rights as riparians to the waters of said river, as well as to the waters within their lands, even though it be true that such latter waters, because they do ultimately find their way by subterranean channels to the said river, are waters of such river.

XXVII.

Your orators allege that defendant city is rapidly increasing in the number of its inhabitants; that in the past few years it has increased in population more than 100,000, its present population being about 150,000 souls; that by repeated acts of its common council, the boundaries of said city have been extended far beyond

the limits of the four square leagues confirmed to the city
50 by the commissioners aforesaid, and now embrace 28,000 acres
of land, or 43 square miles; that the said territory is thickly, and large parts of it densely, populated; that the inhabitants of still other adjacent territory are seeking by petition to be taken into the city, and to have the boundaries of the city extended to embrace several thousand acres of land whereon such petitioners dwell, and the said common council of said city is contemplating and intending to grant said petition; and your orators, basing their statement upon the past action of the said city and its common council in that respect, allege that other areas of adjacent territory will be taken into the corporate limits of said city from time to time; that the inhabitants of such adjacent territory will be, are and have been incited to seek annexation to, and incorporation in, the city by the fact that the said city has claimed and does claim, the right to take the waters of the said Los Angeles river and of its tributaries, and the waters in the lands of your orators, and appropriate them to the uses of the inhabitants of said city, as well those occupying the territory annexed and taken into said city, as aforesaid, as those occupying the original four leagues confirmed to said city as aforesaid.

And said city further claims that your orators and all others similarly situated, have no right to such waters, or to any of them, as against the said city and its inhabitants, whenever said city shall determine that it needs said water; that your orators' present, or any, use of such waters, is at the sufferance of said city, and that said city may prohibit their use of said water at any time, and is threatening, as aforesaid, to institute suits against your orators, for the purpose of enforcing and effectuating said claim.

XXVIII.

Your orators further allege that the said claims of the said city to the exclusive paramount title of the waters, as hereinbefore described, are without right and that said claims and the threat
51 it is making to institute action against your orators, and the dominion and physical control which it has exercised over the said river and the waters thereof, as hereinbefore set forth, and the said several acts of said legislature of California, and the said charters of defendant, purporting to confer upon said defendant the title of said river and its waters and declaring and asserting that such title to said river and its waters is vested in said defendant as successor to the Mexican pueblo have, and do cast a cloud upon the several titles of your orators to the said lands, and have, indeed, in large measure destroyed the market value thereof, and rendered them unsalable at other than ruinously low prices; for that the waters in said lands and the right to use the same and the right as riparians thereto, to use the waters of the Los Angeles river and its tributaries, in irrigating said lands and for other usual and reason-

able uses, constitute the principal value of the same, and are worth to said land from $300 to $600 an acre; that the waters in the lands of your orators are of the aggregate value of more than $1,000,000; that the said claim of the said city to the paramount title of said waters, has diminished the market value of said land,—has, in fact, destroyed such market value, as aforesaid; that such lands and the waters therein with the right to use such waters thereon for irrigation and other purposes, are worth from $325 to $625 per acre, whereas, if the right so to use such waters on said land does not exist except at the sufferance of said city, as it claims and contends and has given out, said lands are of no greater value than from $15 to $25 per acre, as such deprivation of them of the use of the waters within them, will render them arid and desert.

That the value of the matter in dispute hereinbefore set forth between the complainants and defendant city, and between each of said complainants and said defendant city, exceeds, exclusive of interest and costs, the sum of two thousand dollars.

52 Wherefore, all the premises considered:

(1). May it please your honors to grant unto your orators a decree removing the cloud cast by the said defendant City of Los Angeles upon the titles of your orators to their lands above described, as hereinbefore alleged, and that the acts of the legislature of the State of California and the charters of said defendant city herein set forth be decreed and declared invalid in respect of conferring upon said defendant city any rights to or interest in the waters of the Los Angeles river acquired by the Pueblo of Los Angeles under the laws, usages or customs of Mexico or Spain other than such as have been ascertained and confirmed under the act of Congress of March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California."

(2.) May it please your honors to grant unto your orators, and unto each of them severally, a decree forever quieting their several titles to their said several lands, and especially to the waters therein and to the riparian right of each of them to use the waters of the Los Angeles river, as against the claim asserted by the defendant city to the paramount title in and to the said waters in the several lands of your orators and in and to the waters of the said Los Angeles river, which claim, asserted to such paramount title, is set forth in the former parts of this, your orators' bill; that is to say, as against any paramount title asserted and claimed by said defendant city as having been derived from Spain or Mexico, or from either of said governments, or as having been derived from, or in anywise supported by, the said acts of the legislature of the State of California, or either of such acts, or as having been derived from, or supported by, the said charters of said city, or either of them, or any ordinance of said city; and may it please your honors to adjudge and decree that your orators and the defendant city have each and severally such title only, derived from Spain or Mexico, or

53 from both said governments, as was confirmed to them, or to their predecessors in title, under the act of the Congress of

the United States, approved March 3, 1851, and as was, by the United States, granted by the patents executed to the respective confirmees of said several parcels of land.

(3.) And may it please your honors to grant unto your orators, and unto each of them, further decrees forever enjoining the said defendant City of Los Angeles, its officers, agents and servants, from setting up or asserting such paramount right and title to the waters aforesaid, as in this, your orators' bill, is shown to have been, and to be yet, asserted by said defendant as derived from Spain and Mexico, or from either of them, and from the confirmation of its claim to the four leagues of land by the tribunals of the United States and the grant to it, under such confirmation, of said lands, in pursuance of the said act of March 3, 1351; and further enjoining said defendant from asserting and from exercising dominion and physical, or other control, over the said river and its waters and over the waters tributary to the said river and the waters in the lands of your orators, and each of them, under such claim of such paramount title as having been so derived; and further enjoining said defendant from asserting such paramount title to, and from exercising or attempting to exercise such dominion and control over, the said river and the said waters, under or in virtue of said acts of the legislature of California, or of either or of any of them, or of said charters or ordinances of said city, or either of them.

(4.) And may it please your honors to grant unto your orators the writ of subpœna of the United States of America, to be directed to the said City of Los Angeles, thereby commanding it, at a certain day and under a certain pain therein to be inserted, personally to be and appear before your honors in this honorable court, and then and there to answer to all and singular the premises, and further
54 to stand to, abide and perform such orders and decree therein as to this honorable court shall seem agreeable to equity and good conscience.

(5.) And your orators pray for all such other and further relief as shall seem meet and proper in the premises.

JESSE D. HUNTER ET AL.,
Complainants.

McNUTT & HANNON,
STEPHENS & STEPHENS,
WARREN E. LLOYD,
Solicitors for Complainants.

(Endorsed:) In equity. Original. No. 1121. In the United States circuit court, in and for the southern district of California, southern division. Rob't Devine, *et al.*, plaintiffs, *vs.* The City of Los Angeles, a municipal corporation, defendant. Amended bill of complaint. Received copy of the within bill this 10th day of Oct. 1904. W. B. Mathews, H. T. Lee, J. R. Scott, attorneys for def't. Filed Oct. 10 1904. Wm. M. Van Dyke, clerk. Chas. N. Williams,

deputy. McNutt & Hannon, Stephens and Stephens, Warren E. Lloyd, attorneys for complainants, Bullard building, 156 North Spring St. Los Angeles, Cal.

55 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

ROBERT DEVINE and Others, Complainants,
vs.
THE CITY OF LOS ANGELES, Defendant. } No. 1121.

The Answer of The City of Los Angeles, Defendant, to the Amended Bill of Complaint of Robert Devine and Others, Complainants.

This defendant, now and at all times herein saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said amended bill of complaint contained, for answer thereto, or unto so much thereof and such parts as this defendant is advised is or are material or necessary for it to make answer unto, this defendant, for answer*ing*, saith:

1. This defendant admits the allegations contained in paragraph 1 of said amended bill of complaint.

2. This defendant denies, on information and belief that complainants' cause and grounds of complaint against this defendant as set forth in said amended bill of complaint, are common to all of said complainants, or that the claim or asserted title of this defendant, in respect of which this suit is brought, are common against all of said complainants, or that the alleged wrongful acts, complained of by said complainants in said amended bill of complaint as having been done and threatened by this defendant, affect the rights and interests of said complainants in common.

56 3. This defendant admits that the complainant, Robert Devine is the owner in fee simple of the real estate described in paragraph III of said amended bill of complaint, subject to the rights of this defendant to the use of the waters of the Los Angeles river, hereinafter alleged to belong to this defendant.

4. This defendant denies that the complainants, named in paragraph IV of said amended bill of complaint, own all of the lands embraced within the exterior boundaries described in said paragraph; but, on the contrary, allege that there are several tracts of land, comprising an aggregate area of 50 acres and upwards, that are owned by persons or corporations other than the complainants.

This defendant, upon information and belief, denies that the complainants, Charles W. Ingmire, T. J. Moore and Emil G. Hirsch, as administrator with the will annexed of the estate of Robert G. Rabe, deceased, are, or that either of them is, or was at the time of the commencemont of this suit, the owners or owner in severalty, or

otherwise, of any of the lands mentioned in said paragraph IV, or any part thereof, or that said lands, or any part thereof, at the time of the commencement of this suit, formed, or now forms, part of the estate of said Robert G. Rabe deceased.

This defendant admits that all of the complainants, named in said paragraph IV, excepting said Charles W. Ingmire, T. J. Moore and Emil G. Hirsch, as administrator with the will annexed of the estate of Robert G. Rabe, deceased, respectively own in severalty tracts of land embraced in the general boundaries described in said paragraph IV, but alleges that such ownership is subject to the rights of this defendant with respect to the waters of the Los Angeles river, hereinafter mentioned.

5. This defendant admits that the complainant, David A. Kughen, owns all that portion of lot 32 of the subdivision of the Rancho Providencia & Scott tract, lying south of Olive avenue and containing 25 acres of land, but alleges that such ownership is sub-
57 ject to the rights of this defendant with respect to the waters of the Los Angeles river, hereinafter mentioned.

This defendant has no information upon the subject sufficient to enable it to answer the allegations contained in paragraph V of said amended bill of complaint with regard to the ownership by said David A. Kughen of other lands described in said paragraph V, and this defendant, therefore, denies that, at the time of the commencement of this suit, said David A. Kughen owned, or that he now owns, the lands, alleged in said paragraph V to be owned by him, (excepting said portion of said lot 32), or any part thereof.

This defendant admits that the complainants E. A. Marshall, H. S. Sprinkle and W. F. Sprinkle, Edward A. Knapp, Colby Brown, James G. Bennett, sued under the name of Gorden Bennett, Pete Purrier, W. M. Hoist and Esther Hoist, H. P. Johnson and Mary C. Johnson, Simon Fairburn, J. D. Smith, Jean Pinoges and Rosalie Pinoges, Henry C. Hayes and Clara Hayes, H. D. Roberson, George C. Melrose, and Martha J. Melrose, T. D. Buffington and Lena D. Buffington, David B. Wyckhoff, Dwight Griswold, Christ Kraft, T. T. Lewis and Titus Phillips, Mary P. Pomroy, Clementine La Mer and A. La Mer, Albert Bley, John A. Harris, and Mary E. Harris, Henry Braasch, Leonard N. Lockwood, Daniel M. O'Connor and Samuel W. Little, Ezra M. Hurst, Frank W. Grow, John E. Swain and Evan M. Crane, respectively own the respective tracts of land alleged in said paragraph V to be owned by them, respectively, but alleges that such ownership is subject to the rights of this defendant with respect to the waters of the Los Angeles river, hereinafter mentioned.

This defendant admits that the complainant, Luke Craig, owns lot 2 in block 87, and the north half of lot 3 in block 87, named in said paragraph, but alleges that such ownership is subject to the rights of this defendant with respect to the waters of the Los Angeles river, hereinafter mentioned.

58 This defendant has no information upon the subject sufficient to enable it to answer the allegation of said paragraph V in reference thereto, and it therefore denies that the said Luke Craig, at the time of the commencement of this suit, owned, or now owns, lot 4 in block 76, alleged in said paragraph to be owned by said Luke Craig, or any part thereof.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of paragraph V of said amended bill of complaint in reference thereto, and it therefore denies that the complainants named in said paragraph V, other than the complainants whose names are mentioned in this paragraph of this answer, respectively owned, at the commencement of this suit, or now respectively own, the respective tracts of land, alleged in said paragraph to be owned by them respectively, or that any one of the complainants, named in said paragraph V, excepting the complainants whose names are mentioned in this paragraph of this answer, owned at the commencement of this suit, or now owns, any of the lands mentioned in said paragraph V, or any part thereof.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of paragraph V of said amended bill of complaint in reference thereto, and it therefore denies that Andrew Glassell, deceased, named in said paragraph V, at the time of his death owned, or that his estate owned at the commencement of this suit, or now owns, the real property alleged in said paragraph V to have been owned by said Andrew Glassell, deceased, at the time of this death, and to be owned now by his estate, or any part thereof; or that the complainants, Hugh Glassell and Andrew Glassell, as executors of the last will and testament of said Andrew Glassell, deceased, at the time of the commencement of this suit had, or now have, a mortgage interest upon any of the lands wherein said executors are, in said paragraph V, alleged to have a mortgage interest.

59 This defendant admits that the complainants, Henry Nicholaus and Julia E. Nicholaus, Mary N. Patterson, Isabel Ramirez de Tononi, Lorenzo Pelanconi, Honorina P. Valla and Petra Pelanconi, Emil Bary, Alfred E. Hodgson and Martha A. Hodgson, Samuel W. Little and Daniel M. O'Connor, Norman C. Bridge and Clayton Ogier, Norman C. Bridge and Frank Ogier, H. D. Roberson, Alvira I. Clugage, Henry C. Decker and Gertrude E. Decker, David W. Dwire, Charles Forman, Jacob Goetz, Samuel P. Newbill, Emily Brack, Max H. Shelton, Florence A. Stough and Samuel Wilkinson, respectively own the respective tracts of land alleged in paragraph VI of said amended bill of complaint to be owned by them respectively, but this defendant alleges that such ownership is subject to the rights of this defendant with respect to the waters of the Los Angeles river, hereinafter mentioned.

This defendant admits that the complainants, Sam Gilmore, John Gilmore and Clara Gilmore own lot 4 in block 49 of the Rancho Providencia and Scott tract, but this defendant alleges that said

ownership is subject to the rights of this defendant with respect to the waters of the Los Angeles river, hereinafter mentioned.

This defendant has no information upon the subject, sufficient to enable it to answer the allegation of said paragraph VI in reference thereto, and it therefore denies that said Sam Gilmore, John Gilmore and Clara Gilmore, at the time of the commencement of this suit, owned, or that either of them owned, or that they now own, or that either of them now owns, lot 6 of block 57 of Burbank, lot 3 of block 49, block 40, lot 3 of block 4 and lot 8 of block 84 of the Rancho Providencia and Scott tract, or any part thereof.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of said paragraph VI in reference thereto, and it therefore denies that the complainants, William H. Thorne and Nina M. Thorne, R. Furrier, Charles E. Colton, R. B. Shelton and Jennie L. Shelton, Henry Williams and
60 Hester A. Williams, John C. Oestergard, Mary A. Brown, C. E. Grotzinger, Daisy B. Grotzinger and Joseph E. Bonner, and Mrs. A. M. Worthing, at the time of the commencement of this suit, owned, or now own, the respective tracts of land alleged in said paragraph to be owned by said complainants respectively, or that any one of said complainants, at the time of the commencement of this suit owned, or now owns, any of the lands described in said paragraph, or any part thereof.

This defendant has no information upon the subject sufficient to enable it to answer the allegation of said paragraph VI in reference thereto, and it therefore denies that the complainants named in paragraphs III, IV, V and VI of said amended bill of complaint, excepting the complainants who are herein admitted to own the land described in said paragraphs, at the commencement of this suit were, or either of them was, or that they are now, or that either of them is now in possession of the respective tracts of land alleged in said paragraphs to be owned by said complainants or any of them.

This defendant admits that each of the complainants, named in said paragraphs III, IV, V and VI, who are herein admitted to own the tracts of land alleged in said paragraphs to be owned by such complainants, is in possession of the tract of which he is herein admitted to be the owner.

This defendant admits that the complainant, Emil G. Hirsch is the administrator with the will annexed of the estate of Robert G. Rabe, deceased.

7. This defendant, upon information and belief, denies that, on the 20th day of October, 1784, or at any other time, the Rancho San Rafael, mentioned in paragraph VII of said amended bill of complaint, was granted by the government of the Kingdom of Spain, or by any other government or officer, to Jose Maria Berdugo, named in said paragraph, or that any grant of said rancho to said Jose Maria Berdugo was confirmed on the 12th day of February,
61 1789, or at any other time; but, on the contrary, this defendant alleges on information and belief, that the alleged grant,

mentioned in said paragraph VII, was, in fact, only a license to pasture cattle and horses and did not pass or purport to pass any title whatever to the person to whom said alleged grant was made, and that said license did not include any right to the waters of the Los Angeles river, mentioned in said bill of complaint, whether surface or subterranean, but, in said license, the exclusive right of and absolute ownership by the then pueblo of Los Angeles, (the predecessor in interest of this defendant), to and of all of the waters, surface and subterranean, of said river, were reserved to said pueblo and recognized by said license.

This defendant admits that the said Jose Maria Berdugo, and his heirs and successors, were subjects of the Kingdom of Spain, and citizens of the Republic of Mexico, and were entitled to the benefits of the treaty of Guadalupe Hidalgo, in respect to the rights of property of Mexican citizens secured to them by said treaty, as alleged in said paragraph VII; and this defendant also admits that the said Jose Maria Berdugo, and his heirs and successors, after the grant of said license, held and possessed said rancho up to the present time; but this defendant alleges, on information and belief, that said Jose Maria Berdugo died prior to the making of the treaty of Guadalupe Hidalgo, mentioned in said amended bill of complaint, and that his heirs and successors in interest became, and were, citizens of the United States of America under the provisions of said treaty, prior to the 4th day of April 1850.

8. This defendant admits the filing and presentation of the claim by Julio Berdugo, *et al.*, as alleged in paragraph VIII of said amended bill of complaint.

9. This defendant admits the confirmation and issuance of a patent to the said Julio Berdugo, *et al.*, as alleged in said paragraph IX in said amended bill of complaint, but this defendant
62 alleges, upon information and belief, that said patent, mentioned in said paragraph IX, did not include any rights to the waters of said Los Angeles river, whether surface or subterranean.

10. This defendant admits the making of the grant of the Rancho Los Felis to Maria Ignacia Berdugo, the facts as to the citizenship of said Maria Ignacia Berdugo, that she was entitled to all of the benefits of the treaty of Guadalupe Hidalgo in respect of the rights of property of Mexican citizens secured to such citizens, as alleged in paragraph X of said amended bill of complaint; but this defendant alleges, on information and belief, that said Maria Ignacia Berdugo did not part with any of her title to said rancho until after the confirmation of her claim thereto, mentioned in said paragraph, and that she became a citizen of the United States of America prior to the 4th day of April, 1850, by virtue of the provisions of said treaty of Guadalupe Hidalgo; and this defendant further alleges, upon information and belief, that said grant was, in fact, made to said Maria Ignacia Berdugo for pasturage of cattle and horses, and not for agricultural purposes, and that it was not intended by such grant

to give to said grantee any right to the use of any of the waters surface or subterranean, of said Los Angeles river.

11. This defendant admits the presentation of the claim by said Maria Ignacia Berdugo, and the confirmation thereof, and the issuance of a patent for said Rancho Los Felis, as alleged in paragraph XI of said amended bill of complaint; but this defendant alleges, on information and belief, that said patent did not include any right to the waters of the Los Angeles river, mentioned in said amended bill of complaint, whether surface or subterranean.

12. This defendant admits the making of the grant of the Rancho Providencia to Vicente de la Osa, the citizenship of said Vicente de la Osa, and the fact that he was entitled to all of the benefits
63 of the treaty of Guadalupe Hidalgo in respect to the rights of property of Mexican citizens secured to such citizens, as alleged in paragraph XII of said amended bill of complaint; but this defendant denies, on information and belief, that the successors of said Vicente de la Osa were entitled to all or any of the benefits of said treaty, or to any article or provision thereof, but, on the contrary, this defendant alleges that said Vicente de la Osa retained all his title to said Rancho Providencia until after the admission of the State of California into the Union, and that he became a citizen of the United States of America prior to the 4th day of April, 1850, by virtue of the provisions of said treaty.

This defendant, on information and belief, alleges that said grant did not include any rights to the waters of the Los Angeles river, mentioned in said bill, whether surface or subterranean, but, in and by said grant, the exclusive right of and absolute ownership by the then pueblo of Los Angeles, (the predecessor in interest of this defendant), to and of all of the waters, surface and subterranean, of said river, and of and to the use thereof, were reserved to said pueblo, and recognized in and by said grant.

This defendant admits the conveyance by said Vicente de la Osa to David W. Alexander and Francis Mellus, the presentation of the claim of said Alexander and Mellus, the confirmation of said claim, and the issuance of the patent for said Rancho Providencia, as alleged in said paragraph XII; but this defendant alleges, on information and belief, that said patent did not include any right to the waters of said Los Angeles river, whether surface or subterranean.

13. This defendant denies, on information and belief, that the several grants of the several ranchos, mentioned in paragraphs VII, X, and XII of said amended bill of complaint did, under the laws of Spain and of Mexico, or of either of those countries, or under
64 any other laws, or that any one of said grants, under the laws of Spain and of Mexico, or of either of those countries, or under any other laws, or at all, conveyed or carried a grant to the grantees respectively, or to any one or more of the grantees in said grant, or any one of them, title to the waters within the lands embraced in such grant or grants, or any part thereof, so far as such waters constituted a part of the Los Angeles river, mentioned in

said amended bill of complaint, whether of the surface or the subterranean stream thereof, or found their way into the stream of said river, whether by flowing, percolation, oozing or filtration, or by any other means; but, on the contrary, this defendant alleges, on information and belief, that all of the waters within all of the lands embraced in said ranchos, which form part of the stream, surface or subterranean, of said Los Angeles river or which found their way, by flowing, percolation, oozing, filtration, or any other means, into said Los Angeles river, were, by the terms of all of said grants of said ranchos, and by the laws of the government making such grants, excepted and reserved from all of said grants, in favor of the pueblo of Los Angeles, (the predecessor of this defendant); and this defendant also denies, upon information and belief, that the Government of the United States confirmed or caused to be confirmed to the grantees in said grants, and their heirs, successors and assigns, or any of them, any title to any of the waters within any of the lands embraced in any of said ranchos, which formed a part of the stream, surface or subterranean, of said Los Angeles river, or which found their way into said river, whether by flowing, percolation, filtration, oozing or any other means whatsoever; and this defendant denies that the Government of the United States ever executed to the confirmees, mentioned in said amended bill of complaint, or any of them, any grants or grant of the lands mentioned in said amended bill of complaint, or any part thereof, excepting the patents mentioned in said amended bill of complaint.

65 This defendant upon information and belief, denies that the lands of the ranchos, mentioned in said paragraph XIII, or of either of said ranchos, or any of said lands, were, prior to the issuance of the patent for such land, alleged in said amended bill of complaint to have been issued, owned in fee simple by the person or persons who had acquired the title of the original grantee from the Spanish or Mexican government of such land; but, on the contrary, this defendant alleges, upon information and belief, that all of the grants, alleged in said amended bill of complaint to have been made of the ranchos also mentioned in said amended bill of complaint, were inchoate and imperfect, and did not pass an absolute fee simple title to the grantees in such grants, but all of such alleged grants were subject to revocation by the government by which it was made, and were confirmed by the United States of America only in satisfaction of the supposed moral obligation imposed on them by said treaty of Guadalupe Hidalgo.

14. This defendant admits that the complainants, who are hereinbefore admitted to own lands described in said amended bill of complaint, deraign their title to such lands as alleged in paragraph XIV of said amended bill of complaint.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of said paragraph XIV in reference thereto, and it therefore denies that the complainants, other than the complainants who are herein admitted to own lands de-

scribed in said amended bill of complaint, or any of them, deraign title in any of the lands described in said amended bill of complaint through mesne conveyances from the persons in whom the title respectively of the several ranchos, mentioned in said amended bill of complaint, were confirmed, as alleged in said bill, or that said complainants, or any of them, deraign title to any of the lands mentioned in said bill through any means or at all.

15. This defendant denies that its predecessor, the pueblo of which it is the successor, was, during the Spanish and Mexican
66 regimes in California, known as the "Pueblo de la Nuestra Senora le Reina de Los Angeles;" but alleges that the true name of said pueblo was the pueblo of "Nuestra Senora Reina de los Angeles;" and this defendant admits that it claims to be and is, in fact, the successor in right and title to all of the grants made by the Spanish and Mexican governments to said last mentioned pueblo.

This defendant admits the filing of the petition and claim, alleged in said paragraph XV to have been filed, as therein alleged, excepting that this defendant alleges that said petition and claim were filed by the mayor and common council of the city of Los Angeles, and that said petition contained matters and things in addition to those alleged in said paragraph to have been contained in said petition.

16. This defendant admits the matters set forth in paragraph XVI of said amended bill of complaint, with reference to the confirmation of the claim therein mentioned as to four square leagues and the rejection of said claim as to the other twelve leagues, and also the taking of the proceedings mentioned in said paragraph XVI.

17. This defendant admits the issuance of the patent mentioned in paragraph XVII of said amended bill of complaint, as therein alleged; excepting that this defendant alleges that said patent recited that the petition for confirmation was filed by the mayor and common council of the city of Los Angeles, and that the claim which was sought, in said petition, to be confirmed, was founded on a grant made to said mayor and common council of the city of Los Angeles, and excepting also that this defendant alleges that said patent purported to grant unto said mayor and common council of the city of Los Angeles, and to their successors in office, the tract of land described in said patent; and excepting also that this defendant alleges that the land described in said patent did not comprise the whole of said four square leagues but omitted a tract of sev-
67 eral hundred acres bounded on the north by the north line of said four square leagues; and excepting also that this defendant denies that no reference was made in the said patent, or in any of the proceedings upon which it was based, to the waters of the Los Angeles river, either by express words or by implication, or that the said patent did not convey nor purport to convey any of said waters, but, on the contrary, this defendant alleges that the petition, mentioned in paragraph XV of said amended bill of complaint, and

the subsequent proceedings with respect to said petition before the board of land commissioners, mentioned in said paragraph, referred to the waters of said Los Angeles river, and showed that it was the intention in said petition to seek confirmation of the claim of the said mayor and common council of the city of Los Angeles to all of the rights possessed by its predecessor, the Pueblo of Los Angeles, in and to the waters of said Los Angeles river, and in and to the use of the same, and there was nothing contained in said proceedings, or in the decree of said commissioners, mentioned in paragraph XVI of said amended bill of complaint, or in said petition to negative the presumption that it was intended to confirm to said mayor and common council by said decree, and to grant to said mayor and common council by said patent, all rights to the waters of said Los Angeles river, and to the use of the same, previously possessed by said pueblo of Los Angeles; and this defendant alleges that said patent did purport to grant to said mayor and common council of the city of Los Angeles all appurtenances belonging to the land therein granted, which said appurtenances embraced all of the waters of said Los Angeles river of the right to the use of the same.

18. This defendant admits the issuance of the patent of date August 4th, 1875, mentioned in paragraph XVIII of said amended bill of complaint, as therein alleged; excepting that this defendant denies that said patent contained no grant of the Los Angeles river to the patentee therein, or that said patent did not contain
68 any grant of any waters whatsoever, but, on the contrary, this defendant alleges that the said patent contained the same grant of the waters of said Los Angeles river and of the right to use the same that was contained in said patent mentioned in paragraph XVII of said amended bill of complaint, and did, in fact, grant to said mayor and common council of the city of Los Angeles all of the appurtenances belonging to the land therein granted, which said appurtenances did embrace all of the waters of said Los Angeles river and the right to the use of the same.

This defendant denies, on information and belief, that said patent, of date August 4th, 1875, is or was ever ineffective for any purpose, or that the President had no lawful authority to issue such patent, or that authority to issue such patent had been exhausted by the execution of said patent of date August 9th, 1866.

19. This defendant admits that it claims the paramount right to the waters of said Los Angeles river by virtue of grants, laws, usages, and customs of the the Republic of Mexico and the Kingdom of Spain, and the act of the legislature, passed April 4th, 1850, mentioned in paragraph XVIII*a* of said amended bill of complaint; but this defendant denies that said sources of title are the only ones through which it claims such title; but, on the contrary, this defendant alleges that it also claims said paramount right by virtue of long and continued use and possession of said river and the waters thereof for a period of more than 120 years, and by various grants and conveyances from private individuals, and by virtue of various

judgments and decrees of courts of competent jurisdiction, and by virtue of the patents to the mayor and common council of the city of Los Angeles, hereinbefore referred to, and also by virtue of its ownership of various tracts of land belonging to this defendant which are riparian to said river, amounting in area to more than 4000 acres of land, and embracing the land through which said river flows in passing through the lands included in said last mentioned patent.

69 This defendant denies that it claims that said last mentioned act of the legislature granted to the municipal corporation, thereby created, any vested private rights, if any, to the Los Angeles river, mentioned in said paragraph XVIII*a*, or the waters thereof, or the right to the use of the same, or any part thereof, or any water right whatsoever, if any, which was, at the time of the passage, approval or taking effect of said act, vested in the complainants in this suit, or any of them, or in the predecessor or predecessors in interest of said complainants, or of any of them; but, on the contrary, this defendant disclaims having acquired, under the said last mentioned act of the legislature, any right, if any, to said Los Angeles river, or to the waters thereof, or the use of said waters, or any part thereof, or any other water or right whatsoever, if any, which was, at the time of the passage, approval or taking effect of said act, vested in said complainants, or any of them, or the predecessor or *prede-ssors* in interest of said complainants, or of any of them, or in any private individal or private corporation whatsoever.

This defendant admits the passage of the act of the legislature of April 4th, 1850, set forth in said paragraph XVIII*a*.

This defendant admits that it never procured confirmation of or had ascertained or settled, under the act of Congress of March 3, 1851, mentioned in said paragraph XVIII*a*, any rights of the Pueblo of Los Angeles, or of this defendant, as its successor, in or to the waters of said Los Angeles river, other than as confirmed, ascertained and settled by the proceedings, alleged in said amended bill of complaint to have been taken by the city of Los Angeles before the board of land commissioners under said act of Congress; but this defendant alleges that there was mention made in said proceedings of the claim of The Mayor and Common Council of the City of Los Angeles, the petitioner named in said petition, for all of the rights possessed by said Pueblo of Los Angeles, with respect to the

70 waters of said Los Angeles river, and that the decree, rendered by said board of land commissioners in said proceedings, had the effect of confirming said claim, and the patent, mentioned in said paragraph XVIII*a*, had the effect of granting, to said Mayor and Common Council of the City of Los Angeles, all the rights with respect to the waters of said Los Angeles river which were possessed by said former Pueblo of Los Angeles.

This defendant denies that it as successor of said pueblo, is not now, the owner of any right, or rights formerly owned by said pueblo, in the waters of said Los Angeles river, other than such as

passed under the grant of the land confirmed to this defendant by the patent mentioned in said paragraph XVIII*a*; but, on the contrary, this defendant alleges that it is, and ever since said act of the legislature, passed April 4th, 1850, it and its predecessors have been, the owner of all of the rights possessed by said pueblo of Los Angeles with respect to the waters of said Los Angeles river, by and through other sources of title than the said confirmation and patent, and that said confirmation and patent were only in recognition of a previously granted and existing right, which had been vested in said pueblo of Los Angeles from its founding up to its dissolution by said act of the legislature, passed April 4th, 1850, and which became vested in the municipal corporation, created by said act, under and by virtue of the same.

This defendant denies that the acts of the legislature, proceedings and acts and charter of this defendant, referred to in said paragraph XVIII*a*, are, or that any one of them is, a cloud upon the titles of said complainants, or of any of them, to the riparian lands, mentioned in said paragraph, or any of them, or any part thereof, or grievously or otherwise affect or hinder said complainants, or any of them, in the use, enjoyment or sale of said lands, or any of them, or any part thereof; but, on the contrary, this defendant alleges that said complainants did not, nor did any of them, at the time of the commencement of this suit, have, nor do said complainants, or any of
71 them, now have, any right title, interest or estate of, in or to the waters of said Los Angeles river, or any part thereof, or of, in or to the use of said waters, or any part thereof, save in subordination and subject to the paramount right of this defendant to take and use all of the waters of said river to the extent of its necessities for all purposes for which this defendant, or its inhabitants, may desire to use said waters.

20. This defendant admits that said Los Angeles river runs as in paragraph XIX of said amended bill of complaint alleged.

This defendant denies that the whole of each of the Ranchos Providencia, San Rafael and Los Felis is riparian to said river, but, on the contrary, this defendant alleges that all of said ranchos were subdivided more than ten years ago, and various portions of each of said ranchos, amounting in the aggregate to several thousand acres, on such subdivisions, were separated from said river so as not to be riparian thereto.

This defendant denies that all of the several tracts of the complainants in this suit are riparian to the surface stream of said Los Angeles river, but, on the contrary, alleges, on information and belief, that none of said tracts are riparian to such surface stream, with the exception of those alleged in said amended bill of complaint to belong respectively to the complainants Jesse D. Hunter, Asa Hunter, Peter Cartato, Leonard C. Clark, Edward Partridge, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, and B. F. McWhorter, Minnie Glassell Brown, W. C. B. Richardson, Randolph H. Stracey, Isabel Ramirez de Tononi, Lorenzo

Pelanconi, Petra Pelanconi, and Honorina P. Valla and W. J. Boston, and the tract of 88.67 acres, alleged in said amended bill of complaint, to belong to the estate of Andrew Glassell, deceased.

This defendant admits that, underlying each and all of the several tracts of land described in said amended bill of complaint, there are waters at varying distances below the surface of the earth.

72 This defendant denies, on information and belief, that said last mentioned waters, or any part thereof, had not flowed as a stream, or are oozing in the land, or that said waters, or any part thereof, so percolate in the lands as not to constitute a running stream, or that said waters, or any part thereof, do not constitute any part of the waters of the Los Angeles river; but, on the contrary, this defendant alleges, on information and belief that all of said last mentioned waters form and constitute a running stream and part of said Los Angeles river, and all of said waters would, if not intercepted, reach the surface stream of said river at a point above the northern boundary of the said city of Los Angeles.

This defendant denies, on information and belief, that under and by virtue of the patents and mesne conveyances, referred to in said paragraph XIX, or any of them, or at all, said last mentioned waters, or any part thereof, belong to the several complainants by reason of their several or other ownership or ownerships in the land, mentioned in said paragraph, or by reason of any other matter or thing whatsoever, or that said complainants, or any of them, have, or ever had, any ownership of said waters, or any part thereof, save in subordination and subject to the paramount right of this defendant to take and use all of said waters so far as it and its inhabitants might need the same for any purposes for which this defendant and its inhabitants might desire to use said waters.

This defendant admits that the waters, alleged in said paragraph XIX to exist in the lands of complainants, would be of great value to the owners of said lands, by reason of the fact that, by pumping they can be brought to the surface of the land and there used for the irrigation of valuable crops; but this defendant denies, on information and belief, that said waters are, or ever were of any value to the several owners of said lands except in so far as such

73 value may be given to said lands by the right of said complainants to use said waters when this defendant has no need of them.

This defendant denies, on information and belief, that valuable crops cannot be produced on said lands without irrigation from said last mentioned waters, or that said waters are necessary to said complainants, or any of them, in the ownership, use or cultivation of their several lands, or any part thereof, or for the domestic use of complainants who reside upon said lands, though this defendant admits that more valuable crops could be raised on said lands by irrigation with said waters, and that it would be more convenient

to the owners of said lands to make use of said waters for domestic use thereon.

This defendant admits that the complainants, Henry Herberger, Edward A. Knapp, George C. Melrose, A. La Mer, H. S. Sprinkle, and W. F. Sprinkle, T. D. Buffington, John A. Harris, E. M. Crane, P. Purrier, H. P. Johnson, Albert Bley, Henry Braasch, Leonard N. Lockwood, Isabel R. de Tononi, and Daniel M. O'Connor, have bored wells and erected pumping plants upon their several tracts of land, and are severally using the waters which they are pumping from said lands for domestic and irrigating purposes, and producing valuable crops on said lands; but this defendant, on information and belief, denies that, without the use of said waters, said crops could not be produced, though defendant admits that, without such waters, the crops which could be produced on said lands would not be as valuable as those which are raised by means of irrigation with said waters.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of said paragraph XIX with reference thereto, and it therefore denies that the complainants, Tropico Water Company, Edward Ayers, Triumvirate Water Company, A. S. Robinson, F. L. Cole, Victor Carlson, Simon Fairburn, Charles Patterson, B. J. Miller, Isaac C. Goode, Frank W. Grow, E. N. Hearst, John E. Swain, Ellen R. Hall, Henry H. Hall
74 and John Sparks have, or that any one of them has, bored wells or well or erected pumping plants or plant upon their several tracts of land, or any them, or that said complainants are, or any one of them is, using the water from said lands, by pumping or otherwise, for domestic or irrigating or other purposes, or producing valuable or other crops or crop on said lands by means of irrigation with the waters of said lands, or that, without the use of the waters of said lands, said crops could not be produced.

21. This defendant denies that, in the petition of The Mayor and Common Council of the City of Los Angeles to the board of land commissioners for confirmation of the pueblo land of said city, alleged in said amended bill of complaint to have been filed by said City of Los Angeles, this defendant neither made nor asserted any claim to the waters of the Los Angeles river, either by virtue of any express grant from the Spanish government or from the government of the Republic of Mexico, or in virtue of any polity of said government or either of them, or in virtue of any customary law of said governments or either of them; but, on the contrary, this defendant alleges that in said proceedings for said confirmation, the right of said pueblo to the waters of said river by reason of the grant thereof made to said pueblo by the laws of Spain and Mexico, and by the recognition of the rights of said pueblo by both of said governments, was so referred to and mentioned as to show that said petitioner, The Mayor and Common Council of the City of Los Angeles, did intend to claim confirmation of its claim to the rights possessed by said pueblo of Los Angeles with respect to the waters of said river,

and that it was intended by the confirmation of the claim of said mayor and common council of the city of Los Angeles to the pueblo lands of said pueblo, to also confirm the claim of said mayor and common council of the city of Los Angeles to all rights with respect to the waters of said river which were possessed by said pueblo.

75 This defendant denies, upon information and belief, that, in confirming the grant of four square leagues of pueblo lands to said mayor and common council of the city of Los Angeles, the board of land commissioners, mentioned in paragraph XX of said amended bill of complaint, made no finding or judgment in respect of said Los Angeles river, or its waters, or the waters of its tributaries; but, on the contrary, this defendant alleges, on information and belief, that the said board of land commissioners, in its finding and judgment, confirming the claim of said mayor and common council of the city of Los Angeles to its pueblo lands, also confirmed the claim of said City of Los Angeles to the rights with respect to the waters of the Los Angeles river which were possessed by said pueblo of Los Angeles.

This defendant admits that it, and its officers and agents have claimed in the past, and now claim, that this defendant is the owner of all the waters of the said river, and of all of the waters of its tributaries, passing through the ranchos mentioned in said amended bill of complaint, and all the waters of the said river from its sources of supply to the southern boundary limits of said city of Los Angeles, and also all the waters percolating and existing in the lands of the complainants, described in said amended bill of complaint, and the waters under the lands of said complainants.

This defendant denies, on information and belief, that the waters in the lands of said complainants, or any part thereof, do not constitute a stream, or are percolating waters in the sense of not possessing the elements of a water course or stream, but, on the contrary, this defendant alleges, on information and belief, that all of said last mentioned waters do, in fact, constitute a stream or water course, and are part of the waters of said Los Angeles river.

This defendant admits that it claims that the complainants have not, nor has any one of them, any right to pump the waters

76 in their lands, because the same might ultimately have the effect of reducing the supply in the surface and subterranean river, but this defendant denies, on information and belief, that said waters do not flow by any defined or other channel into the surface waters of said river, or do not constitute any part of the surface flow of said river, or that said waters are percolating in the sense that the same do not possess the elements of a stream or water course.

This defendant admits that it, and its officers and agents, assert and claim the right, at any time when the water is needed by this defendant and its inhabitants, within its present enlarged boundaries, to take said waters and appropriate the same to its use, and deny the right of complainants to any part of the surface water of said river, and also deny the right of complainants to pump any of the waters

in the lands of complainants, mentioned in said amended bill of complaint, for use on their own lands, or for domestic uses, except subordinate to the paramount claim and right of this defendant and its inhabitants to take and use said waters; but this defendant denies that it claims the right to enter on the lands of said complainants, or any of them, to take or use said waters, or any part thereof, without having first obtained the right so to do by grant from or condemnation against the said complainants.

This defendant admits that it claims the right to prevent the complainants from using any part of the waters, mentioned in said paragraph XX, when this defendant has need of the same for the use of this defendant and its inhabitants; but this defendant denies that it claims the right to prevent said complainants from using the waters of said river by entering upon the lands of said complainants and using physical force to prevent such use by said complainants,
but this defendant claims the right to prevent the use of said
77 waters by said complainants only in a manner prescribed by
the laws of the State of California, namely by preventing the erection of any works on the lands of this defendant, and by the destruction of any works which shall be erected by said complainants on the lands of this defendant, which have the effect of diverting any of the waters of said river from its natural channel any by entering upon the lands of said complainants and peaceably abating and removing any obstruction to the flow of the waters of said river when such abatement and removal can be made without a breach of the peace and without physical violence against the complainants, their agents or employees.

This defendant admits that it has filed a complaint in the State courts against certain of the complainants in this suit, for the purpose of enjoining said complainants, against whom such complaint was filed, from using any part of the waters pumped by said complainants from their several wells and using it upon their several tracts of land; but denies that said complaint is against all of said complainants, and this defendant alleges that it intends to enforce its rights against said complainants by means of said suit and other legal process which it intends to institute against them, and not by any unlawful acts or physical force or violence.

22. This defendant admits that it rests its right and claim to the said Los Angeles river and to the waters thereof, including the waters in the lands of the complainants in this suit, in part, upon the treaty of Guadalupe Hidalgo, mentioned in paragraph XXI of said amended bill of complaint, but denies that it rests its said right and claim upon a construction of said treaty other than the manifest, undoubted and indisputable meaning thereof, namely, that the rights of pueblos in the present State of California were intended to be protected by said treaty as well as the rights of private individuals.

This defendant admits that it rests its right and claim to said
river, and to the waters thereof, including the waters in the
78 lands of said complainants, in part, upon the act of Congress, referred to in said paragraph, but this defendant denies that

it rests its said right and claim upon a construction of said act of Congress, or upon a construction of sections 8, 11, 13 and 14 of said act, other than the manifest, undoubted and indisputable meaning thereof, namely, that the claims of pueblos in the State of California, or of municipal corporations succeeding such pueblos, were authorized by said act to claim confirmation to such pueblos or municipal corporations of the pueblo lands granted to such pueblos by the Spanish and Mexican governments in the State of California, and that the confirmation of such lands had the effect also of confirming all water rights which were appurtenant to such pueblo lands during the Spanish and Mexican regimes in said State, and that said act did not require claims for property acquired under the laws of Spain and Mexico in said State, other than lands, to be presented for confirmation.

This defendant denies that in said petition of The Mayor and Common Council of the City of Los Angeles to the board of United States land commissioners for confirmation of the pueblo lands of said pueblo of Los Angeles, mentioned in said amended bill of complaint, said petitioner made no claim on account of any grant or any law, customary or statutory, or any public polity of the Spanish or Mexican governments from which said grant of any right to the said Los Angeles river, or its waters can be inferred or derived, except such rights thereto as were incident to any and all grants upon water courses; but, on the contrary, this defendant alleges that the said petition did, in fact, refer to the rights of the pueblo of Los Angeles with respect to the waters of said Los Angeles river in such manner as to show that said petitioner claimed the exclusive ownership of and right to all of the waters of said Los Angeles river, from its sources down to the southern boundary of said city of Los Angeles.

79 This defendant denies that it rests its claim to said Los Angeles river and its waters, including the waters in the lands of said complainants, upon the laws enacted by the legislature of the State of California, and the ordinances and charters adopted by said city of Los Angeles and approved by said legislature, mentioned in said paragraph, except only to the extent that the charters of this defendant and its predecessors as contained in the acts of the legislature of the State of California, mentioned in said amended bill of complaint, and in the charter adopted by the voters of the city of Los Angeles and approved by said legislature, also mentioned in said amended bill of complaint, had the effect of vesting and continuing in this defendant, and its predecessors, the municipal corporation created by the act of the legislature, passed April 4th, 1850, and mentioned in said amended bill of complaint, and the other acts of the legislature and charter also mentioned in said amended bill of complaint, such rights with respect to the waters of said Los Angeles river as were possessed by said pueblo of Los Angeles immediately before its dissolution by said act of the legislature, passed April 4th, 1850, and such rights with respect to the waters of said river as might

have been vested in the State of California upon its admission to the Union; but this defendant denies that it claims that the acts of the legislature of the State of California, and the charters of the city of Los Angeles, mentioned in said amended bill of complaint, or any one of them, granted to the mayor and common council of the city of — Angeles, or to the city of Los Angeles, (the predecessor of this defendant), any vested private right, if any, to any water flowing or being upon the surface or beneath it in the bed of said Los Angeles river, or any water or right whatsoever, if any, which was, at the time or times of the passage of said acts of the legislature, or any of them, or at the time of the adoption or approval of said charter, vested in the complainants, or any of them, or in the predecessor or predecessors in interest of the
80 complainants, or any of them; but, on the contrary, this defendant disclaims having acquired under said acts of the legislature, or any one of them, or under said charter, any right, if any, to the water flowing upon the surface or beneath it in the bed of said river, or any other water or right whatsoever, if any, which was ever vested in the complainants, or any of them, or in the predecessor or predecessors in interest of the complainants, or any of them, or in any private individual or private corporation whatsoever; and this defendant also denies that it claims, or ever claimed under or by virtue of said acts of the legislature, or any of them, or under or by virtue of said charter, the right to develop waters percolating in the bed of said river, or elsewhere, without first having obtained the right of entry upon the lands, whereon such waters existed, to so develop, from the owner of the soil where such development should be made, either by grant from such owner, or by condemnation of such right and after making compensation to said owner therefor.

This defendant denies that it claims, or ever claimed, that there was granted by said acts of the legislature, or any of them, or by said charter, to the mayor and common council of the city of Los Angeles, or to the city of Los Angeles, (the predecessor of this defendant), any right, if any, to develop waters percolating under the bed of said Los Angeles river, or elsewhere, which was, at the time of the passage of said acts, or any of them, or at the time of the adoption or approval of said charter, vested in the complainants, or any of them, or in the predecessor or predecessors of the complainants, or any of them, or in any private individual or corporation whatsoever; and this defendant disclaims that said acts of the legislature, or any of them, or said charter or any other act of the legislature or charter, had the effect of granting to the mayor and common council of the city of Los Angeles or to the city of Los Angeles, (predecessor of this defendant), any right, if any, to develop
81 water percolating in the bed of said Los Angeles river, or elsewhere, which was, at the time of the passage of said acts, or any of them, or at the time of the adoption or approval of said charter, vested in the complainants, or any of them, or in the predecessor

or predecessors of the complainants, or any of them, or in any private person or private corporation whatsoever.

This defendant denies that the legislative acts and the ordinances and charters, mentioned in paragraph XXI of said amended bill of complaint, were, or any one of them was, passed, enacted, ordained or approved, because or in pursuance of the alleged erroneous construction mentioned in said paragraph of said treaty of Guadalupe Hidalgo, or of said act of Congress, or especially in pursuance of the alleged erroneous construction of sections 8, 11, 13 and 14 of said act of Congress, or of either of said sections, or of any other erroneous construction whatsoever; but, on the contrary, this defendant alleges, on information and belief, that said legislative acts, ordinances and charters were passed, enacted, ordained and approved with the intention of asserting that which was supposed to be a fact, namely, that the city of Los Angeles was the owner of all of the rights possessed by the pueblo of Los Angeles with respect to the waters of said Los Angeles river, which rights embraced the paramount right to take and use all of the waters of said river to the extent of the needs of said city and its inhabitants for all purposes for which it or they might desire to use said waters, and not with the intention or purpose of depriving the complainants, or any of them, or the predecessor or predecessors of the complainants, or any of them, or any other private individual or private corporation, of any right to the waters of said Los Angeles river, or any part thereof, or of any right to take and use the same.

23. This defendant admits the passage and approval of the three acts of the legislature, approved respectively on the 26th day of March 1874, the 1st day of April 1876, and the 30th day of
82 March 1878, mentioned in paragraph XXII of said amended bill of complaint; but this defendant denies that there was intended, by said acts, or any one of them, to be granted to the city of Los Angeles, any right, if any, to the water flowing in said Los Angeles river, or to develop, economize, use or utilize all or any waters flowing beneath the surface in the bed of said river, which was then vested in the complainants in this suit, or any of them, or in the predecessor or predecessors of said complainants, or any of then, or in any private individual or private corporation whatsoever; and this defendant alleges that it was not stated, nor intended, in said acts, or any one of them, that the grant, therein purported to be made of the right to the water flowing in said Los Angeles river, and of the right to develop, economize, use and utilize all water flowing beneath the surface in the bed of said river, should divest any private person or private corporation of any vested private rights to the water flowing upon the surface or beneath it in the bed of said river, nor have said acts, or any of them, ever been construed by any court of the State of California to so divest any such private vested rights, but, on the contrary, it has been determined by the highest court of said State, to wit, the supreme court, that said acts did not have the effect of divesting any such private rights, or of

sting in this defendant, or its predecessors, any right with respect the waters of said river, which would not have been owned by it them had such acts of the legislature never been passed.

This defendant admits the preparing, proposing, adoption and pproval of the charter of this defendant, and also the other pro-edings with reference thereto, mentioned in said paragraph XXII; at this defendant denies that there was thereby intended to be ranted to this defendant, any right, if any, to any of the water owing in said Los Angeles river, or the ownership of or the right to develop, economize, control, use or utilize any waters flow-
3 ing beneath the surface in the bed of said river, which was, at the time of the adoption or approval or taking effect of aid charter, vested in the complainants, or any of them, or in the redecessor or predecessors of the complainants, or any of them, or n any private person or private corporation whatsoever.

This defendant alleges that it was not stated nor intended in said ast mentioned charter that the grant, therein purported to be made, f the right to the water flowing in said Los Angeles river, and of he right to develop, economize, control, use and utilize all waters owing beneath the surface in the bed of said river, should divest ny private person or private corporation of any vested private ights to the water flowing upon the surface or beneath it in the bed f said river.

This defendant admits the preparing, proposing, adoption and pproval of the amendments to the charter of this defendant, and he subsequent proceedings with regard thereto, mentioned in said aragraph XXII; but this defendant denies that there was, by said mendments, intended to be granted to this defendant any right vith respect to the waters of said Los Angeles river, or the right or urisdiction to manage or control, any waters, water rights, water earing lands, water works, reservoirs, zanjas or ditches, which were, t the time of the adoption or approval or taking effect of said mendments, vested in the complainants, or any of them, or in the redecessor or predecessors of complainants, or any of them, (*or in he predecessor or predecessors of complainants, or any of them,*) or n any private individual or private corporation whatsoever.

This defendant denies that it claims that said amendments granted o this defendant any vested private right, if any, with respect to he waters of said Los Angeles river, or any right to manage or control, any waters, water rights, water bearing lands, water works, reservoirs, zanjas or ditches, which was, at the time
84 of the adoption, approval or taking effect of said amend-ments, vested in the complainants, or any of them, or in the predecessor or predecessors of the complainants, or any of them, or in any private individual or private corporation whatsoever; but, on the contrary, this defendant disclaims having acquired in or by said amendments, any right, if any, with respect to the waters of said Los Angeles river, or any right to manage or control, any waters, water rights, water bearing lands, water works, reservoirs,

zanjas or ditches, which was, at the time of the adoption, approval or taking effect of said amendments, vested in the complainants in this suit, or any of them, or in the predecessor or predecessors of said complainants, or any of them, or in any private individual or private corporation whatsoever.

24. This defendant denies that, under the several acts of the legislature, and the charter and the amendments thereof, mentioned in paragraph XXIII of said amended bill of complaint, or any of them, or under any other act of the legislature or charter this defendant, through its officers or agencies constituted for that purpose, or any of them, or through any other officers, agencies or means whatsoever, has asserted, or does assert, or has assumed, the right to take physical or other management or control of the Los Angeles river or its tributaries, mentioned in said paragraph, or the waters of the valley, also mentioned in said paragraph, or any part thereof, or has asserted or exercised the right or authority to obstruct any ditch or ditches or other conduits or conduit, erected or maintained by the owners or owner of any lands or land in the valley of said river, or elsewhere, or any other ditch or conduit whatsoever, or to prevent the use of the waters of said river, or any part thereof, by the inhabitants of said valley, or any of them, for irrigating the lands, or land, belonging to the complainants herein, or any of them, or any other person or corporation.

85 This defendant denies that, through its officers or agencies constituted for that purpose, or through any other officers, agencies or means, it has asserted, or does assert, or has assumed, the right to take physical or other management or control of the said river, or its tributaries, or said waters of said valley, or any part thereof, except in so far as said river and its tributaries and said waters may be located on or in the lands which are owned by this defendant or on which the right of entry to exercise such management and control has been acquired by this defendant by purchase from or condemnation against the owner or *w*oners of said lands, and excepting that this defendant has asserted, and does assert, and has assumed, the right, (accorded by the general laws of the State of California to every private person or corporation, entitled to have a natural water course flow freely and unobstructed), of entering on all lands, through which the surface stream of said river and its tributaries flows, and removing and abating any obstruction which may be placed in said stream, when such entry can be made without a breach of the peace and after reasonable notice has been given to the occupants of such lands of this defendant's intention to make such entry.

This defendant denies that it has, through its officers or agencies constituted for that purpose, or any of them, or through any other officers, agencies or means whatsoever, asserted or exercised the right or authority to obstruct any ditches or ditch or any other conduits or conduit, erected or maintained by the owners or owner of any lands or land in the valley of said river or elsewhere, or any

other ditch or conduit whatsoever, (excepting the ditches and conduits belonging to this defendant and not claimed by any other person or corporation), or to prevent the use of the waters of said river, or any part thereof, by the inhabitants of said valley, or any of them, in irrigating the lands or land belonging to the complainants herein, or any of them, or belonging to others, except as hereinafter in this paragraph expressly admitted.

86 This defendant admits that it has asserted and exercised the right and authority to obstruct two certain ditches, used by the complainants, Asa Hunter, Jesse D. Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Anastacio Feliz, Concepcion Feliz and John S. Pollock, and others for the diversion and conveyance of water from said river for domestic use on, and irrigation of their respective lands located on the western side of said river and other lands; but this defendant alleges that such right and authority have been so asserted and exercised by it under its claim, as successor of said Mexican pueblo of Los Angeles, to the ownership of the rights with respect to the waters of said river, formerly possessed by said pueblo, and under the claim of ownership with respect to said waters acquired by this defendant by virtue of the judgments or decrees hereinafter alleged to have been rendered and entered in favor of this defendant and against the predecessors in interest of said eight last named complainants and others with regard to said last mentioned ditches and said waters diverted thereby; and this defendant further alleges, on information and belief, that such obstruction was made on land belonging to this defendant, and whereon said complainants had no right of entry for the diversion or conveyance of water from said river save a license revocable at the pleasure of this defendant.

This defendant denies that, through its officers, or agencies constituted for that purpose, or any of them, or through any other officers, agencies or means whatsoever, it has ever prevented the complainants, or any of them, from using, or has ever interfered with them, or any of them, in their use, of the waters of said river or its tributaries, or the waters of said valley, or any part thereof, except as hereinbefore admitted with regard to said ditches, so used by the complainants, Asa Hunter and others, and except when such waters

87 were located on or in the lands which belong to this defendant or on which this defendant had acquired a right of entry to divert and use said waters by grant from or condemnation against the owner or owners of said lands, and excepting when the defendant has prevented or interfered with such use by judgments or decrees obtained by due process of law; and this defendant denies that, through its officers or agencies constituted for that purpose, or any of them, or through any other officers agencies or means whatsoever, it has ever asserted, or does assert, or has assumed, the right to take the physical or other management or control of any waters on or in any of the lands of the complainants, or any of them.

This defendant admits that it has, under the act of the legislature,

passed April 4th 1850, mentioned in said amended bill of complaint, asserted and assumed the title to all of the rights possessed by said former pueblo of Los Angeles with respect to the waters of said river, including all the waters in the lands of complainants; but this defendant denies that, under said act, it has asserted, or does assert, or has assumed, any right with respect to the waters of said river which was, at the time of the passage or approval of said act, or at any time since, vested in said complainants, or any of them, or in the predecessor or predecessors of said complainants, or any of them, and not since acquired by this defendant, or its predecessors, from said complainants, or their predecessors in interest, (from said complainants, or their predecessors in interest) or some of them, by means other than said act of the legislature.

This defendant also admits that it has asserted, and does assert, and has assumed, under its present charter, to wit, the charter and amendments thereof, adopted by vote of its electors and approved by the legislature, mentioned in said amended bill of complaint, the corporate power of taking physical management and control of all property belonging to this defendant, but not of any property belonging to the complainants, or any of them, nor where such physical management or control cannot be exercised without a
88 breach of the peace or committing physical violence against said complainants, or any of them, or the agents or employés of said complainants, or any of them, nor where such property is located on or in any of the lands of said complainants, or any of them; and this defendant disclaims that said charter and amendments, and said act passed April 4th, 1850, or the other acts of the legislature mentioned in said paragraph XXIII, or any of them, gives or grants to this defendant the right to take physical or other management or control of any property belonging to complainants, or any of them, or to obstruct any ditch or conduit belonging to said complainants.

This defendant denies that the laws, charters and the assertion and exercise of power and authority, mentioned in said paragraph XXIII, or any of them, have resulted in the destruction or in the diminution of the values of complainants' lands, or any part thereof, except that this defendant admits that if it should recognize that said complainants are entitled to use the waters of said Los Angeles river, including the underground waters in the lands of complainants, for the irrigation of such lands, the effect would be to make such lands much more valuable than they are now, or ever were, but this defendant alleges, on information and belief that such lands never had a value upon the basis or assumption that the owners thereof were entitled to use the waters of said Los Angeles river, including the underground waters in said lands, when this defendant had need of said waters for the use of itself and its inhabitants.

25. This defendant denies that the acts of the legislature, and the ordinances and charters of this defendant, mentioned in said amended bill of complaint, are, or that any one of them is, in violation of the

fourteenth amendment of the Constitution of the United States, or that they deprive or attempt to deprive, or that any one of them deprives or attempts to deprive, said complainants, or any
89 one of the-, of their, his or her property, without due process of law, or at all, or to grant to or confer upon this defendant, the right or title to any property of said complainants, or any of them.

This defendant denies that the acts, ordinances and charters, mentioned in said paragraph, or any of them, impair the obligation of the several contracts made through and by the several patents executed by the United States to the several predecessors in title of the complainants, or any one of said contracts.

This defendant denies that one of its departments has asserted or exercised the right or authority to take physical or other control or possession of said Los Angeles river, or the waters thereof, or of its tributaries, or any part thereof, except as hereinbefore expressly admitted; and this defendant further denies that this defendant, through its agencies, or other means, has interfered with the rightful or other use by said complainats, or any of them, of the lands severally held or owned by them, or any of them, or of the waters therein, or any part thereof, or of the waters of said Los Angeles river, except as hereinbefore admitted.

This defendant denies that the several acts of the legislature and of this defendant, including the charters and ordinances of this defendant, mentioned in said paragraph, or any other act or acts of the legislature, or charters or ordinances of this defendant, are in violation of section 1979, title XXIV, of the Revised Statutes of the United States, or that this defendant, under color of said statutes of the State of California, or any of them, or under color of the charter provisions and of the ordinances mentioned in said amended bill of complaint, or otherwise, has subjected or cause to be subjected said complainants, or any of them, to the deprivation or deprivations of property rights, privileges or immunities secured to them by the Constitution or laws of the United States.

90 26. This defendant denies that it has never, at any time, held or professed to hold the lands included in the patent, alleged in said amended bill of complaint to have been issued to the city of Los Angeles, or any part thereof, in trust for the inhabitants of said city, or that this defendant held, or professed or still professes to hold the said lands as owner and proprietor thereof, in its own right, as a municipal corporation, and free from any trusts; but, on the contrary, this defendant alleges that it, and its predecessors, have, ever since the passage of said act of April 4, 1850, held and professed to hold all of the lands embraced in said patent, in trust for its inhabitants upon the trusts upon which the pueblo of Los Angeles, the predecessor of this defendant, held said lands, except in so far as such trusts were changed by the laws of the United States and of the State of California passed after the acquirement of

the territory, now comprised in the State of California, by the United States of America.

This defendant denies that after the issuance of said patent to its predecessors, the mayor and common council of the city of Los Angeles, none of the lands embraced in said patent were allotted or assigned to the inhabitants of said city according to the "Plan of Pitic;" or according to any other rule, law or regulation established by either the Spanish or Mexican government, but, on the contrary, this defendant alleges that both before the issuance of said patent, and during the period immediately succeeding the 4th day of April 1850, and after the issuance of said patent, and for many years thereafter, this defendant and its predecessors did allot to its inhabitants large tracts of land within the four square leagues embraced in said patent, under substantially the same regulations that were in force during the Mexican regime in California, with a view of encouraging settlement of said lands, and which allottments were made by way of donation and without compensation, except small fees which were required to be paid to the officials charged with the duty of issuing certificates and deeds.

91 This defendant denies that in making sales of any of the lands included in said last mentioned patent, this defendant or its predecessor did not undertake or agree to furnish such lands with water from said Los Angeles river, but, on the contrary, this defendant alleges that nearly all of the lands which were sold or donated by it, were conveyed with the distinct understanding that said lands should be supplied with water from said Los Angeles river by said city, where the same were agricultural and sufficiently low so as to admit of the bringing of water by gravitation from said river to such lands, and this defendant alleges that many thousands of acres of said lands were actually supplied by this defendant and its predecessors with water from said river for the irrigation thereof, and would continue to be so supplied were the same not now utilized for building lots and covered with houses and other urban improvements.

This defendant denies, on information and belief, that after the confirmation, mentioned in paragraph XXV of the amended bill of complaint, the lands embraced in said last mentioned patent, or any part thereof, were sold to strangers but, on the contrary, this defendant alleges, on information and belief, that all of the lands which were ever sold by this defendant, or its predecessors, after the passage of said act of April 4th, 1850, were sold to inhabitants of said city.

This defendant denies that it has never, at any time, made any provision whatsoever, to furnish waters from said Los Angeles river, upon any notion or theory, or upon any undertaking or agreement based upon such notion or theory, that the waters of said Los Angeles river were in any way appurtenant to the lands confirmed, held and sold by said city, but, on the contrary, this defendant alleges that all of the lands which were sold by it, and which were suscepti-

ble of irrigation by reason of being sufficiently low as to admit of the bringing of water by gravitation thereon from said river, were so sold with an appurtenant right to so much of the waters of
92 said Los Angeles river as might be needed for the irrigation of said lands when there was enough of such waters to supply all of the lands which were irrigated in said city from said river, subject to the right of said city, as trustee of the trusts whereon the right to the waters of said river was held, to control the distribution of said waters among the inhabitants of said city with a view of properly discharging said trust.

This defendant denies that it ever claimed that it had the right to take the waters of said river, as absolute owner thereof, and sell them to its inhabitants as private proprietor, but, on the contrary, this defendant alleges that it has always claimed that its right to take and use the waters of said river was held in trust for the benefit of its inhabitants, and that it had no right to sell said waters for a profit except for the purpose of maintaining the works necessary to divert and distribute said waters.

This defendant denies that the construction attempted to be placed upon said act of Congress by complainants in paragraph XXVI of said amended bill of complaint, is right or proper, or consistent with justice or equity, or that, according to the right and proper construction of said act the claimant to title to water rights derived from Spain or Mexico, upon an express grant, or upon a grant implied by the general polity or the customary laws of the Spanish or Mexican government, must have presented his or its petition, setting forth the grounds of his or its claim, or that the confirmation of such claim must have proceeded upon such grounds; but, on the contrary, this defendant alleges that the forfeiture, attempted to be invoked in said paragraph, is contrary to justice and equity, and the construction, attempted to be placed on said acts of Congress in paragraph XXVI of said amended bill of complaint, is contrary to the plain, manifest, undoubted and indisputable meaning of said act.

93 This defendant denies that a sound and reasonable or proper construction of said act of Congress will secure said complainants or any of them, in any rights as riparians, or as riparian owners, to the waters of said Los Angeles river, or the waters within the lands of said complainants, or any of them; but, on the contrary, this defendant alleges that, according to the only fair, reasonable and proper or possible construction of said act of Congress, the confirmation and patent therein provided for had the effect of only confirming to the confirmee and patentee therein, the lands therein described, but subject to all of the easements and servitudes which were imposed thereon by the laws of Spain and Mexico in favor of third parties, including the rights to the waters of unnavigable streams which were attached to other lands or which belonged to pueblos or private individuals other than the grantees, in the grants so confirmed and patented, and that, where such water rights were

appurtenant to any lands granted by the Spanish and Mexican governments and so confirmed and patented under said act of Congress, such water rights passed by such patents as appurtenances, and a claim for such water right was not required *or* by such act of Congress to be confirmed or patented.

28. Thi*d* defendant admits the facts alleged in paragraph XXVII of said amended bill of complaint, with regard to the population of said city of Los Angeles and its increase, except that this defendant alleges, on information and belief, that such population was, at the time of the commencement of this suit, at least 170,000 inhabitants.

This defendant admits the facts alleged in said paragraph in regard to the extension of the limits of said city of Los Angeles, beyond the four square leagues confirmed to said mayor and common council of the city of Los Angeles, and that the area of said city is now forty three square miles.

This defendant denies that, at the time of the commencement of this suit, the inhabitants of territory adjacent to said city,
94 or elsewhere outside of said city, were, or are now seeking, by petition, to be taken into said city, or to have the boundaries of said city extended to embrace several thousand acres of land, or any other quantity of land, whereon such petitioners or others dwell, or that the council of said city is contemplating or intending to grant such petition.

This defendant alleges that it has no information upon the subject sufficient to enable it to answer the allegations of paragraph XXVII of said amended bill of complaint with regard thereto, and it therefore denies that other areas, or any area of adjacent or other territory, will be taken into the corporate limits of said city, from time to time, or at any time; but this defendant alleges upon information and belief, that its corporate authorities, including its council, and a great majority of its inhabitants are now opposed to extending the limits of said city so as to take in any additional territory, but are desirous of confining the limits of said city as they now exist.

This defendant denies, upon information and belief, that the inhabitants of any territory adjacent to said city are or have been incited to seek annexation to or incorporation in said city by the fact that said city claimed or claims the right to take the waters of said Los Angeles river and its tributaries and the waters in the lands of said complainants and appropriate them to the uses of the inhabitants of said city, as well those occupying territory annexed and taken into said city as those occupying the original four square leagues confirmed to said city; but this defendant alleges, on information and belief, that all of the territory which has been brought into and added to said city since the incorporation thereof by said act, passed April 4th, 1850, was added to the said city without reference to said fact, and that the inhabitants of no other territory have applied to have such territory included in said city.

95 This defendant has no information upon the subject sufficient to enable it to answer the allegations of said paragraph with reference thereto, and it therefore denies that the inhabitants of territory adjacent to said city of Los Angeles, or any other territory, will be incited to seek annexation to or incorporation in said city by the facts mentioned in said paragraph, or by reason of any other matter or thing.

This defendant admits that it claims that said complainants, and all others similarly situated, have no right to the waters of said Los Angeles river, including the waters in the lands of said complainants, as against this defendant and the inhabitants of said city, whenever this defendant shall determine that it needs said water, and that the present use by said complainants of such waters is at the sufferance of this defendant, and that this defendant may prohibit their use of said water at any time, and that this defendant is threatening to institute suits against said complainants for the purpose of enforcing and effectuating said claim of this defendant.

29. This defendant denies that its claims to the exclusive paramount title to the waters of said Los Angeles river, including the waters in the lands of said complainants, mentioned in paragraph XXVIII of said amended bill of complaint, are without right or that any one of said claims is without right, or that said claims and the threat that this defendant is making to institute an action against said complainants, and any dominion and physical control which this defendant has exercised over said river and the waters thereof, have, or that any one of them has, cast a cloud upon the several titles of said complainants to the lands alleged, in said amended bill of complaint, to belong to them, or has, in a large or other measure, destroyed the market value of said lands or any of them, or rendered said lands, or any of them, unsalable at other than ruinously low prices, or at prices below the real value

96 of said lands; but, on the contrary, this defendant alleges, on information and belief, that, instead of the values of said complainants' lands being destroyed or depreciated by any of the acts of the legislature and charters, and the claims of this defendant, mentioned in said amended bill of complaint, said complainants are endeavoring, by their claims, and by this suit, to add an additional value to their lands equal to the value of the right to use the waters of said river, including the underground waters in said lands, for the irrigation thereof, which right, this defendant alleges, does not belong to the said lands in whole or in part, and said lands never had any value upon the assumption or basis that said right to said waters belonged or was appurtenant to said lands.

This defendant, on information and belief, denies that the waters in the lands of the complainants, Robert Devine, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Anastacio Feliz, Concepcion Feliz, John S. Pollock, William A. Foster, Peter Cartato, William Craig, John Craig, Emily Edna Craig, Joseph Hunter, Louis Salzebeger, Annie Salzegeber, Samuel Hunter,

Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown, Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased, Hugh Glassell, Andrew Glassell, Philip H. Glassell, William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire Pio Sepulveda, Isabel Ramirez de Tononi, Lorenzo Pelanconi, Ptera Pelanconi, Honorina P. Valla, W. J. Boston, T. J. Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Julia E. Nicholaus,
Frederick Mohle, Emil G. Hirsch, as administrator with the
97 will annexed of the estate of Robert G. Rabe, deceased, Dwight Griswold, Giovanni Gai, Leona E. Englehardt, Peter Purrier, E. A. Marshal, Victor Carlson, H. P. Johnson, W. B. Throne, Albert Grover, F. W. Van Wormer, E. J. Bodwell, Marcus H. Cook, F. L. Cole, Abe Dufur, Colby Brown, A. W. Canfield, Gorden Bennett, W. M. Hoist, Esther Hoist, John E. Battelle, Luke Craig, H. P. Johnson, Mary C. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pinoges, Jean Pinoges, Amanda Huff, M. T. Miner, Hess Brewster, Hattie Brewster, Edward Ayers, Sherman A. Roberts, Marilla F. Pratt, Harrison Harvey Davenport, Tropico Water Company, D. McNiver, K. S. Black, Joseph Edgar Moser, Charles Edward Moser, T. T. Lewis, Titus Phillips, Mary P. Pomroy, William Schomp, James Truman, Austin Truman, A. R. Ballantyne, Henry Heide, Florence Malcolm, M. J. Dolson, Charles E. Patterson, William W. Young, Paulina Gastreich, Sara A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Edward E. Condon, John L. Johnson, William H. Thompson, William N. Hall, Henry Munger, Wilbur Purrier, Lydia Dufur, John R. White, John T. Adamson, Martin Pupka, Albert Grover, Laura A. Grover, A. Richards, Gustave Anderson, Annie Wright, George B. Edwards, Minnie Lindgren, Edward Shively, J. M. Shively, William H. Thorne, Nina M. Thorne, Charles E. Colton, R. B. Shelton, Jennie L. Shelton, Henry Williams, Hester A. Williams, Emil Bary, Alfred E. Hodgson, Martha A. Hodgson, Alvira I. Clugage, David W. Dwire, Samuel Wilkinson, Mary A. Brown, C. E. Grotzinger, Daisy B. Grotzinger, Josheph E. Bonner and Mrs. A. M. Worthing, or of any of them, or of any part thereof, or the right to use said waters, or the right, as riparian owners thereon, to use the waters of the Los Angeles river and its tributaries, or any of said waters, in irrigating said lands, or any of them, or any part thereof, or for other usual or reasonable or any uses or use, constitute the principal value of said lands, or any
of them, or any part thereof, or that such waters, or the right to
98 use the same, are worth to said lands, or any of them, or any part thereof, from $300 to $600 per acre, or any other sum or amount whatever in excess of $100 per acre.

This defendant admits that if there were attached to said last mentioned lands the right to use sufficient waters from the surface stream of said river for the irrigation thereof, the value of said lands would be increased and such right would be worth $100 per acre; but this defendant denies, upon information and belief, that if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased more than $100 per acre.

This defendant admits that, if the right were attached to said last mentioned lands to use the waters therein, which do not form part of the surface stream of said Los Angeles river, for the irrigation of said lands, such right would be worth and the value of said lands would be increased $50 per acre, but this defendant denies, on information and belief, that, if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased, more than $50 per acre.

This defendant admits, upon information and belief, that the waters in that portion of the lands of the complainants, David A. Kughen, described as located in the town of Burbank, that portion of the land of the complainant, Henry Herberger, described as lot 6 in block 105, those portions of the lands of the complainant, Andrew Glassell, described as 73.75 acres, 56 acres, 20 acres, and 35.2 acres, the lands alleged in said amended bill of complaint to belong to the estate of Andrew Glassell, deceased, those portions of the lands of the complainant, Henry Luttge, Sr., described as lot 7, in block 82, lots 2, 3, and 4 of block 101, and lots in the town of Burbank, those portions of the lands of the complainants, Almon S. B. Fulton, described as lots in the town of Burbank, those portions of the lands of the complainants, Henry Luke Comber and John T. Comber, described as lots in the town of Burbank, those portions of the lands of the complainant, Frank A. Halberg,
99 described as lots in the town of Burbank, lots 1 and 2 of block 86, those portions of the lands of the complainants, Richard Eustice, described as lots in the town of Burbank, those portions of the lands of the complainant, Alfred L. Wright, described as lots in the town of Burbank, those portions of the lands of the complainant, Orville Myers, described as land in block 87 and lots in the town of Burbank, those portions of the lands of the complainants, Sam Gilmore, John Gilmore and Clara Gilmore, described as lots in the town of Burbank and lots in block 84, or of any of them, or any part thereof, or the right to use said waters, or the right, as riparian owners thereon, to use the waters of the Los Angeles river and its tributaries, or any of said waters, in irrigating said lands, or any of them, or any part thereof, or for other usual or reasonable or any uses or use, constitute the principal value of said lands, or any of them, or any part thereof, or that such waters, and the right to use the same, are worth to said lands, or any of them, or any part thereof, from $300 to $600 per acre, or any other sum or amount whatever in excess of $100 per acre.

This defendant admits that if there were attached to said last

mentioned lands, the right to use sufficient waters of the surface stream of said Los Angeles river for the irrigation thereof the value of said lands would be increased and such right would be worth $100 per acre, but this defendant denies, upon information and belief, that if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased more than $100 per acre.

This defendant admits that, if the right were attached to said last mentioned lands to use the waters therein, which do not form part of the surface stream of said Los Angeles river, for the irrigation of said lands, such right would be worth, or the value of said lands would be increased, $50 per acre; but this defendant denies,
100 on information and belief, that, if such were the case, such right would be worth, or the value of said lands, or any part thereof, would be increased, more than $50 per acre.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of said paragraph XXVIII in reference thereto, and it therefore denies that the waters in the lands described in said amended bill of complaint, other than the lands hereinbefore mentioned in this paragraph, and the right to use said waters, and the right as riparian owners thereon, to use the waters of said Los Angeles river and its tributaries, in irrigating said lands, described in said amended bill of complaint, other than the lands hereinbefore particularly mentioned in this paragraph, and for other usual and reasonable uses, constitute the principal value of said lands, or are worth to said lands from $300 to $600 per acre, or any other sum or amount, in excess of $100 per acre.

This defendant admits that if there were attached to said last mentioned lands the right to use sufficient of the waters of the surface stream of said Los Angeles river for the irrigation thereof, such right would be worth, and the value of said lands would be increased, $100 per acre; but this defendant denies, on information and belief, that if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased, more than $100 per acre.

This defendant admits that if there were attached to said last mentioned lands the right to use sufficient waters therein, other than the surface waters of said Los Angeles river, for the irrigation of said lands, such right would be worth, and the value of said lands would be increased, $50 per acre; but this defendant denies, on information and belief, that, if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased more than $50 per acre.

This defendant denies, on information and belief, that the
101 waters in the lands of the complainants, described in said amended bill of complaint, are of the aggregate value of more than $1,000,000, or of any value whatever.

This defendant admits that if there were attached to the lands of complainants, described in said amended bill of complaint, the right

to use sufficient of the waters in said lands, other than the surface waters of said Los Angeles river, for the irrigation of said lands, such right would be worth, and the value of said lands would be increased, $50 per acre; but this defendant denies, on information and belief, that, if such were the case, said right would be worth or the value of said lands would be increased more than $50 per acre.

This defendant denies, on information and belief, that the claim of this defendant to the paramount title to the waters mentioned in this paragraph, has diminished the market value of the lands described in said amended bill of complaint, or has destroyed such market value, in whole or part.

This defendant denies, upon information and belief, that any of the lands, described in said amended bill of complaint, exclusive of buildings and other structures thereon, and the waters in said lands, with the right to use said waters on said lands for irrigation and other purposes, are worth from $325 to $625 per acre, or that any of such lands and the waters therein, with the right to use such waters, are worth more than $300 per acre.

This defendant alleges, on information and belief, that only a small portion of the lands described in said amended bill of complaint, not exceeding one-fifth part thereof, and being that portion lying south of the southern line of the land of the complainant Isabel Ramirez de Tononi, described in said amended bill of complaint, with the right to use the waters mentioned in said amended bill of complaint for the irrigation of said lands and other use thereon, is worth $300 per acre; and that only a small part of the remainder of said
102 lands, not exceeding $\frac{1}{5}$ thereof, with a similar right to use water, is worth more than $200 per acre; and that the remaining portion, comprising at least $\frac{3}{5}$ of all of the land described in said amended bill of complaint, with a similar right to use said waters is not worth more than $100 per acre.

This defendant denies, on information and belief, that if the right to use the waters in the lands, described in said amended bill of complaint, for the irrigation thereof and other purposes does not exist, except at the sufferance of this defendant, said lands are of no greater value than from $15 to $25 per acre, or that the value of said lands, or any of them, or any part thereof, would be diminished more than $100 per acre below what it would be worth with such right to water from the surface stream of said river, or more than $50 per acre below what it would be worth with such right to water from the underground waters in such lands.

This defendant denies, on information and belief, that, if the lands described in said amended bill of complaint, or any of them, or any part thereof, were deprived of the right to use the waters in said lands for the irrigation thereof, or for other purposes thereon, such lands, or any part thereof, would be rendered arid or desert.

This defendant denies, on information and belief, that the matter in dispute in this suit between the complainants and this defendant, or between each of the complainants and this defendant, ex-

ceeds or amounts to, exclusive of interest and costs, the sum of $2000 or any other sum; but, on the contrary, this defendant alleges, on information and belief, that the only matter in controversy in this suit between the complainants, or any of them, and this defendant, or any of them, is the claim for damages against this defendant for its act in obstructing the ditches, hereinbefore alleged to have been obstructed by this defendant, which obstruction produced no damage whatever.

103 30. And further answering, this defendant alleges, on information and belief:

That, in the year 1781, a pueblo was founded on the site of the present city of Los Angeles, and within four square leagues of pueblo lands, alleged in said amended bill of complaint, to have been confirmed and patented to the city of Los Angeles, which said pueblo was so founded by the government of the Kingdom of Spain, to which the present State of California then belonged and was subject, pursuant to the laws of the said kingdom and the rules and regulations providing for the government of the provinces of the Californias, and thereupon said pueblo became entitled to all the rights of a pueblo, according to said laws, rules and regulations, including the sole and exclusive right to the absolute ownership of all of the waters of the Los Angeles river, mentioned in said amended bill of complaint, whether flowing upon or beneath the surface of the ground, and with the right to the sole and exclusive use of all of said waters, in perpetuity.

That said Los Angeles river was, at that time, and for many years thereafter, known as and called the Porciuncula river, and the same then rose and now rises several miles above said pueblo, and then ran and still runs down through the site of said pueblo and the lands now embraced within said city of Los Angeles; and, during the whole of the occupation and control of said pueblo by the Spanish and Mexican governments, the municipal authorities of said pueblo, at all times exercised control of and claimed the exclusive right to use all of the waters of said river, which right was, during all of said time, recognized, acknowledged and allowed by the owners of all of the lands at the sources and bordering on said river, including the predecessors in interest of the complainants herein; and that, ever since the occupation and control of said pueblo by the Government of the United States, and by the State of California, the municipal authorities of what is now the city

104 of Los Angeles, with the exceptions hereinafter mentioned, have exercised the same control and claimed the same rights in regard to the waters of said river as were previously exercised or claimed by the authorities of said pueblo, as aforesaid; and that the municipal authorities of said pueblo and of said city so exercised control of said waters and claimed the exclusive right to their use as aforesaid, for the purpose of irrigating the lands of said pueblo and of said city and for the domestic and other uses of said pueblo and city and their inhabitants.

That, within a short time, not exceeding one year, after the foundation of said pueblo, the municipal authorities thereof constructed a system of irrigation works, consisting of a dam on said river and a main ditch and various branches, and thereby conveyed the waters of said river down to and upon several hundred acres of lands in said pueblo, where said waters were used for the irrigation of said lands and for domestic use of the inhabitants of said pueblo; and that thereafter, from time to time, other lands of said pueblo were brought under irrigation, to an extent that required all of the waters of said river for the irrigation thereof, and all of said waters were in fact diverted from said river and used for such irrigation during a period of many years during the Spanish and Mexican occupations and prior to the conquest of California by the United States.

That from and after such conquest, and after the present State of California had become a part of the United States, the same use was made of the said waters of said river for the irrigation of the lands within said pueblo, and for domestic use of its inhabitants up to the time of the passage of the act of April 4th, 1850, mentioned in said amended bill of complaint, and during that period several thousand acres of land in said pueblo were irrigated from said river by the inhabitants of said pueblo under the management and control of the authorities of said pueblo, and from time to time, during said
105 period, the extent of said irrigable lands was increased, and additional water works, consisting of ditches and other aqueducts, were constructed, by which a more economical use of said waters was made, so as to enable a greater quantity of land in said pueblo to be irrigated with said waters.

That from and after the incorporation of the city of Los Angeles by said act, passed April 4th, 1850, the municipal authorities of said city from time to time, up to about 18 years ago, continued to construct additional works for the more economical diversion, impounding and distribution of said waters for use in irrigating the irrigable lands in said city, consisting of many thousands of acres, and for the domestic use of said inhabitants, and, in the construction of such works expended several hundred thousand dollars.

That, within the past 18 years, nearly all of said irrigable lands have been subdivided into building lots and covered with houses, which have been and are occupied by many thousands of people, so that all of the waters, which had been previously used for the irrigation of said lands, excepting the portion thereof which has been diverted by the complainants within the past five years, have been used for the uses of said city and its inhabitants other than for irrigation, and all of the waters of said river have, during the dry season of the year, extending from the 1st day of May to the 1st day of November of each year, and a great portion of said waters during the rest of the year, been needed for said uses.

That during said period, this defendant has expended many millions of dollars for the construction of water works for the diversion,

impounding and distribution of said waters for its municipal uses and for the use of its inhabitants.

That the population of said city is now not less than 180,000 people, and is rapidly increasing at the rate of more than 10,000 souls per year, and at least such rate of increase will probably continue for many years to come.

106 That this defendant has no other source of supply except said river.

That, during the Mexican regime in California, said pueblo gave a license to the then owner of the Rancho Los Felis, mentioned in said amended bill of complaint, to take water from said river with which to irrigate a portion of said Rancho Los Felis; and, under and by virtue of said license, said Maria Ignacio Berdugo constructed a ditch by means of which she conveyed a portion of the surface waters of said river to and upon said portion of said rancho, and she and her successors in interest continued to divert and use waters from said river for the irrigation of said portion of said rancho, under and by virtue of said license, until the year 1885.

That, in the year 1868, the successors in interest of said Maria Ignacio Berdugo, as to a portion of said rancho, repudiated the license that had been so given by said pueblo, and set up a claim to the right to use said waters of said river, so previously diverted and used by her and them, for the irrigation of said portion of said rancho, independent of said license, and as belonging to them by virtue of their ownership of land riparian to said river.

That during said period between some time in 1868 and 1885, litigation was had between this defendant and said successors in interest of said Maria Ignacio Berdugo with respect to the waters so diverted by them as aforesaid, and it was, in said litigation, determined that this defendant had no need of said waters, so diverted, and that therefore this defendant was not entitled to enjoin the diversion and use thereof by said successors in interest.

That thereafter, in the years 1884 and 1885, by deeds of conveyance, the successor in interest of said Maria Ignacia Berdugo, to wit, Griffith Jenkins Griffith, as to last-mentioned portion of said rancho, conveyed all of his interest in the waters of said river and in the right to use the same to this defendant.

107 That thereafter, to wit, on the 18th day of August, 1885, and while said Griffith Jenkins Griffith was the owner of all of the lands in said rancho on which said waters had been used as aforesaid under said license, this defendant commenced an action against him in the superior court of the county of Los Angeles, State of California, in which county said lands were situated, and which said court had jurisdiction of said action; and thereafter, to wit, on the 24th day of August, 1885, a judgment or decree was duly rendered, given and entered in said action by said superior court, whereby it was decreed that this defendant, The City of Los Angeles, was then the owner of the waters of said Los Angeles river, and en-

titled to the full and free use of all water flowing in said river, and in all the ditches connecting with said river.

That, during the Mexican regime in California, said Maria Ignacia Berdugo, or her licensees, under a license from said pueblo of Los Angeles, diverted waters from said Los Angeles river and used the same for the irrigation of lands in said Rancho Los Felis, and about the same time the owners of lands in said pueblo, located on the west *said* of said Los Angeles river, by permission of the authorities of said pueblo, also diverted water from said river for the irrigation of their lands in said pueblo, commonly known as the Corralitos.

That said last-mentioned diversion and use of said waters by said Maria Ignacia Berdugo, or her licensees, and said owners of said Corralitos, continued up to the year 1876 without any denial on the part of any of said parties and their successors in interest, of the right of said pueblo, up to the 4th day of April 1850, or of said city after that time, to the ownership and control of all the waters of said river; but, in the year 1876, the persons making use of said last-mentioned waters, set up a *claim* of right in themselves to said waters, and repudiated the license from said pueblo under which they had been using said waters, and thereupon brought two
108 suits against this defendant in the then district court of the 17th judicial district of the State of California in and for the county of Los Angeles in the year 1879 to restrain this defendant from interfering with the use of said waters by the plaintiffs in such suits.

That thereafter, on the 4th day of August, 1881, a final decree was entered in each of said suits in favor of this defendant, enjoining said plaintiffs in both of said suits from diverting any of the waters of said river except by permission of this defendant, The City of Los Angeles; and thereafter, up to the year 1903, all of said parties and their successors in interest, recognized the right to and ownership by this defendant of all the waters of said river and the right to use the same, and only made use of the waters of said river by permission of this defendant and as its licensees, under its control and regulation.

That, within the past twenty years, claims have been made by various persons to the right, as against this defendant, to divert the waters of two affluents of said river, one of said affluents having been newly formed by excessive rainfall within that period and the other being a pond or lake created by artificial means more than fifty years ago, and the waters of both of said affluents were so used; but this defendant has since obtained a decree of a court of competent jurisdiction of said county of Los Angeles enjoining the further diversion or use of either of said affluents by the parties so making use of the same.

That, within the past 12 years, certain owners of lands in which the underground waters of said river flow, have set up a claim that said underground waters were not part of the said river, but were a part of the soil, and that such owners were entitled to take and ap-

propriate said waters for their own use, and, in furtherance of such claims, great numbers of said parties, including some of complainants, have constructed wells, and are engaged in pumping
109 large quantities of said water and thereby diminishing the surface flow of said river; and it is for the purpose of preventing such diminution of the surface flow of said river that this defendant is bringing, and contemplates bringing, the actions against complainants which are referred to in said amended bill of complaint.

That, until within the past five years, the abstraction of the underground waters in the lands of those of the complainants, on whose land wells have been constructed, as aforesaid, did not interfere with the supply of water required by this defendant for the uses of itself and its inhabitants; but, within the past three years, the amount of diversion, by means of said wells, has increased so much, and the needs of said city and its inhabitants have also so greatly increased, that the waters of said river, which reach the surface stream thereof, and the underground diversion works of this defendant, have not been sufficient to supply this city and its inhabitants with the water needed by it and them.

That, with the exceptions in this paragraph of this answer stated, said pueblo of Los Angeles, from the time of its foundation in the year 1781 up to the incorporation of said pueblo as a city by said act of the legislature, passed April 4th, 1850, by its municipal authorities, and by its servants, agents and officers, continuously, exclusively and adversely to the whole world, used all of the waters of said Los Angeles river for the irrigation of the four square leagues, embraced in said patent to the city of Los Angeles, mentioned in said amended bill of complaint, and for other public municipal purposes of said pueblo, and for the domestic use of its inhabitants, claiming the right so to do by virtue of its said ownership of said waters and of its said right to use the same; and that, ever since said incorporation of said city of Los Angeles, this defendant and its predecessors have, (except as hereinbefore otherwise alleged), continuously, exclusively and adversely to the whole world, used
110 all of said waters of said river for said purposes under the claim of ownership of said waters and of said right as successor of said Mexican pueblo and by virtue of the long continued user and control of said waters by said pueblo and said city as aforesaid.

That, in the existing charter of this defendant, as amended by the amendments mentioned in said amended bill of complaint, a department was created for the management and control of the water works, water rights and waters of this defendant, and, in said charter, it is provided that this defendant should convey to the commissioners, managing said department, all property, including water works, water rights and lands, exclusive of the waters of said Los Angeles river and the right to use the same, which the council of this defendant might deem necessary to be used by said department in the

management and control of the water works, waters and water rights of this defendant, for supplying this defendant and its inhabitants with water.

That, in accordance with said requirements of said charter, this defendant has conveyed to said commissioners the title to various portions of the lands, belonging to this defendant at the time of such conveyance, hereinafter described, and said commissioners now hold said lands in trust for this defendant for the purpose of managing and controlling the water works, waters and water rights of this defendant.

That there are now owned by this defendant, in its own corporate name, or in the name of said commissioners, the following described lands, which are riparian to said Los Angeles river, to wit:

Blocks 19, 21, 23, 24, 37, 38, 66, 39, 40, 42, 58, 59 and 65, the east half of block 22, the east half of the north half of block 44, the south half of block 45, the west half of the north half of block 45, the east half of the north half of block 56, the west half of block 55,
111 the north half of block 41, the east half of the south half of block 43, the west half of block 57, the west half of the east half of the south half of block 57, and the east half of the north half of block 64, all of the Rancho Providencia and Scott tract, according to the map thereof recorded in Book 23 of Miscellaneous Records page 25, in the office of the county recorder of the county of Los Angeles, State of California, containing about 725 acres of land.

Also that tract of land bounded north and northeast by blocks 65, 66, 67, 68, 69, 77, 79 and 80, of said Rancho Providencia and Scott tract, according to said recorded map thereof, on the south and southeast by the southeastern line of said Rancho Providencia, being the northern line of the Rancho Los Felis, and land of the Grant's Pass Land and Water Company, and on the west by block 71 of said Rancho Providencia and Scott tract, according to said recorded map thereof, containing 288.48 acres of land.

Also all that tract of land bounded on the north by the northern line of said Rancho Los Felis, on the east by the eastern line of said Rancho Los Felis on the south by that portion of the Rancho Los Felis formerly known as the Lick tract, and a part of which is now as Ivanhoe, and on the west by the western line of said Rancho Los Felis, excepting that portion thereof belonging to the Briswalter Land and Water Company, which portion does not touch the surface stream of said river, and is part of the land owned by said Griffith Jenkins Griffith at the time of his conveyance to this defendant, and at the time of the rendition and entry of the decree against him in favor of this defendant, hereinbefore referred to; said tract of land, after deducting said excepted portion, containing about 3000 acres of land.

Also lot 7 in block 81 of said Rancho Providencia and Scott tract, according to said recorded map thereof, containing 20 acres.

Also that tract of land in the Rancho San Rafael, commencing at the southwestern corner of the land of complainant, J. D. Watson, thence

along said land easterly 805.29 feet; thence S. 3° 13′ E.
111½ 749.8 feet; thence S. 25° 23′ W. 1303.29 feet to the eastern line of the Rancho Los Felis, and thence along the same N. 8° 30′ W. 1947.32 feet to the place of beginning, containing 23.15 acres, but subject to the rights reserved to Hugh Glassell in the deed from him and wife to the Crystal Springs Land and Water Company, recorded in Book 804 of Deeds page 274 in said recorder's office the said reservation not including any right with respect to the waters of said river or the waters in said lands.

Also that tract commencing at the northeast corner of lot 12 block 2 of the Ivanhoe tract, according to the map thereof recorded in Book 17 of Miscellaneous Records pages 65 *et seq.*, in said recorder's office; thence N. 28½° E. 6.15 chains; thence N. 79¾° W. 7 chains; thence N. 46° W. 40.45 chains; thence S. 86½° W. 8.41 chains; thence S. 25½° E. 12.50 chains; thence N. 29½° E. 2.20 chains; thence S. 35° E. 13 chains; thence S. 60¼° E. 9.92 chains; thence S. 46½° E. 6.43 chains; thence S. 59½° E. 9 chains; and thence S. 84¾° E. 6.73 chains to the place of beginning, containing 43.62 acres of land, and being bounded on the north by the north line of the Lick tract, on the east by the east line of the Lick tract, on the south by the south line of the Lick tract, and on the west by the east line of the Ivanhoe tract.

Also a tract of land extending from the point of intersection of said Los Angeles river with the northern boundary of the pueblo lands of said city of Los Angeles, described in the patent to said city, mentioned in said amended bill of complaint, down to the point of intersection of said river with the southern line of said pueblo lands, and embracing an area of several hundred acres of land.

Also the tract of land, situated in said city of Los Angeles, commonly known as Elysian park, containing 400 acres of land.

31. And further answering, this defendant alleges:

112 That heretofore, to wit, on the 15th day of July, 1879, Henry Elms, Thomas Brooks, Juana Chaves, Manuela Chaves, F. M. Covert, Gabriel Chaves, Keziah Hunter and William Hunter, as plaintiffs, commenced an action against this defendant in the then district court of the 17th judicial district of the State of California, in and for the county of Los Angeles, which said court then and there had jurisdiction of said action; and, in the complaint therein, said plaintiffs alleged that they owned a certain water ditch commencing at a point on the Los Angeles river in the Rancho Los Felis, mentioned in the bill of complaint herein, a short distance above the city of Los Angeles, in said county, and running through the lands of said plaintiffs in said action, a distance of about one and one-half miles, and commonly known as the "Chaves ditch" or the "Corralitos ditch," and that such ditch was constructed by their predecessor in interest, more than 30 years before the filing of said complaint, and that said predecessor and his successors including said plaintiffs, had possessed and used said ditch for conducting water from said Los Angeles river to and upon said lands of said

plaintiffs for domestic use and for irrigating said lands, to the extent of 100 square inches, measured under a four inch pressure, ever since the construction of said ditch, and also that this defendant did, on the 25th day of May, 1879, entirely obstruct the flow of water through said ditch, and had continued so to obstruct such flow up to the commencement of said action so as to prevent water from flowing through said ditch from said river; and in said complaint said plaintiffs prayed judgment that this defendant be restrained from obstructing said ditch and from interfering with the use of the waters of said Los Angeles river that had been accustomed to flow in said ditch.

That thereafter, on the 6th day of October, 1879, an amended complaint was filed in said action by the same plaintiffs against this defendant, in which the lands of said plaintiffs were particularly described as embracing a general tract known as the
113 Corralitos, and in which amended complaint it was alleged that all of said lands of plaintiff were riparian to said Los Angeles river, and that all of said lands were entitled to a reasonable use of the waters of said river for domestic use upon and irrigation of said lands, and that the use of the quantity of water flowing through said ditch was no more than what said lands were reasonably entitled to as riparian to said river; and in said amended complaint said plaintiffs prayed judgment that they be quieted in their rights and titles to said ditch and the right to use the waters of the said Los Angeles river to the extent of the quantity which was accustomed to flow in said ditch, and that this defendant be perpetually enjoined and restrained from obstructing or in any manner interfering with said ditch, and from interfering with plaintiffs in the use of the waters of said river that might or ought to flow in said ditch or would flow when the obstruction of said ditch should be removed, and from preventing the plaintiffs from appropriating said waters by and causing the same to flow through said ditch, and from exercising or assuming to exercise any authority over said ditch or said water flowing or to flow therein to the prejudice of said plaintiffs.

That thereafter, on the 20th day of October, 1879, this defendant filed its answer and cross complaint in said action, wherein it was alleged, among other things, that this defendant was founded as a Spanish pueblo in or about the year 1786, on the present site of the city of Los Angeles, on the banks of the Los Angeles river, that said river was unnavigable, that said pueblo was, from its first settlement, the owner of and entitled to the use of the water of said river for irrigating and domestic purposes for its inhabitants, and did, through its officers and others, from the time of its first settlement until the date of incorporation of this defendant on the 4th day of April 1850, appropriate, claim and use, by means of ditches etc. for irrigation
by the inhabitants of said pueblo of lands within its limits
114 and for domestic use of its inhabitants, all of the water flowing in said river, and did, during all of said period exercise control of the use of the water of said river as regarded distribution

for said purposes both within and without the limits of said pueblo, and its right to so control and distribute was always recognized by all persons living on the banks of said river, and said right was recognized by the laws of Spain and Mexico and all the inhabitants of said pueblo, that this defendant was incorporated by the legislature of the State of California on the 4th day of April 1850, and succeeded to all the rights of said pueblo in regard to property, which rights were repeatedly recognized by the legislature of said State, that this defendant had adopted ordinances for the distribution of the waters of said river for irrigation, and without systematic arrangement of distribution of said waters there was not sufficient water for all the inhabitants of said city who were necessitated to use the same, that, by reason of the system adopted by this defendant, and the extensive improvements and facilities such as reservoirs, tunnels, ditches and flumes, costing more than $250,000 all of the irrigators of said city were able to obtain water, that this defendant, ever since its incorporation, had appropriated, owned and been entitled to the free and exclusive use and enjoyment for said purposes of all of the waters of said river, which was then and always had been a public use, and had imposed fines on all persons using said water without permission of this defendant, and the jurisdiction thus exercised had been recognized by the courts and by the legislature and all persons residing in and without said city, that large quantities of the lands within said city were planted in fruit trees and vines requiring abundant irrigation, and the sewers of said city required flushing and the streets sprinkling, and the inhabitants of said city, numbering 15,000 people, had need of several million gallons of water daily for domestic purposes and said city also required water for the extinguishment of fires, and for all of said purposes
115 large quantities of the waters of said river, which were the only source of supply of said city, were required, that the plaintiffs in said action, on the 25th day of May, 1879, and at other times, had wrongfully obstructed the flow of the waters of said river, and had diverted the same upon the lands of said plaintiffs, and had threatened to continue to so obstruct the flow of the waters of said river and divert said waters as often as desired by them, which waters were then required for irrigation within said city and by its inhabitants, and that unless said plaintiffs were restrained from doing said acts, great and irreparable injury would be done to this defendant and its inhabitants; and in and by said amended complaint, this defendant prayed for an order perpetually enjoining said plaintiffs from obstructing, diverting or using any of the waters of said river without the permission of this defendant, or in any way interfering with the rights of this defendant to said waters, and for general relief.

That thereafter, said action was regularly tried before the superior court of said county, which, under the constitution of said State, adopted in the year 1879, had succeeded to the powers and jurisdiction of said district court with regard to said action, and to which

said superior court said action had been duly transferred by operation of law, and thereafter, on the 1st day of September 1880, in accordance with the practice then prevailing in the courts of said State, written findings of fact and conclusions of law were duly made and filed by said superior court in said action, and also in the action of Anastacio Felis, Jr., and others against this defendant, hereinafter mentioned, wherein said court found that, in the year of 1781, pursuant to the laws of Spain and the rules and regulations providing for the government of the provinces of California, Los Angeles was duly formed into a pueblo according to said laws, rules, and regulations, and all its rights as such pueblo since then were duly recognized and allowed by the Spanish and Mexican
116 governments during their respective occupations and control of the same, and also by the respective provincial and departmental authorities of California; that the river of Los Angeles rises several miles above the former pueblo of Los Angeles, and runs down through said pueblo, and during the occupation and control of said pueblo by the Mexican government, the municipal authorities at all times exercised control of and claimed the exclusive right to use the waters of said river and all thereof, which right was duly recognized, acknowledged, and allowed by the owners of the land at the source and bordering on said river, including the grantors of the plaintiffs, and that ever since the occupation and control of said pueblo by the Government of the United States, and that of the State of California, the municipal authorities of what is now the city of Los Angeles, have exercised the same control and claimed the same rights in regard to the waters of said river as was previously done by the authorities of said pueblo, except within the last two or three years, when the right of said city to said waters has been disputed by the plaintiffs and others, and a right claimed by them to use said waters, that the municipal authorities of said pueblo and said city exercised control of said waters, and claimed the exclusive right to their use as aforesaid, for the purpose of irrigating the lands of said pueblo and city, and for the domestic use of the inhabitants thereof; that the waters of said river *is* necessary for the irrigation of the land within said city, and so confirmed as aforesaid, and also for the domestic use of its inhabitants, but until the last two or three years all of said water has not been required in said city. For the last few years, during the irrigating season, all of said waters, as they naturally flow in said river, have not been sufficient for the irrigation of the irrigable portion of said lands and the domestic use of said inhabitants; and said city, at an expense of more than one hundred thousand dollars, has constructed reservoirs to husband and save said waters for uses in said city; that a large
117 portion of the irrigable lands of said city are not irrigated, and never have been irrigated, which will require more than all the waters of said river, with the present facilities and resources of said city for husbanding and supplying the same; that said city has been supplying the inhabitants of said city with said water for

the uses aforesaid, and when there has been more than has been required for use in the city it has and still does sell to parties residing without, and to be used on lands without, the city; that ever since about the year 1844 the plaintiffs and their grantors have owned, possessed, and cultivated the land claimed by them in their complaints, and have ever since irrigated the same from said river through the respective ditches mentioned in the respective complaints, to wit, the Chavez and Feliz ditches, to about the same extent as now irrigated by the plaintiffs, using the waters, also, for domestic purposes; and the waters of said river are necessary for the irrigation of said lands and for domestic use; but the uses of said waters were originally, by permission and under consent from the municipal authorities of said pueblo, and have ever since been, with such permission and consent, and not adversely nor claimed as of right until within the last three years, during which time (the last three years) plaintiffs have claimed, and still claim, the right to use said waters on their land and for domestic purposes; that plaintiffs are the respective owners of the parcels of land claimed by them in their complaint, and the respective ditches therein referred to are used and are necessary to irrigate the same; and said ditches have always been in the exclusive possession and control of said plaintiffs and their grantors from about the year of 1844 until the 25th day of May, 1879; and that on the 25th day of May, 1879, the plaintiffs were respectively, and for several days prior thereto, diverting through said ditches, to the extent of about one hundred inches in each of said ditches, the waters of said river to and upon their respective tracts of land aforesaid, and using the same thereon

118 for irrigation and domestic purposes, and the same was no more than was reasonable and necessary therefor; and by reason of such uses by plaintiffs, water became diminished in said river, and sufficient thereof could not and did not reach said city or its waterworks (plaintiffs' said ditches having their points of diversoins above said city and its waterworks) to supply what was reasonable and necessary for irrigation and domestic use in said city; and by reason of such diversion by plaintiffs a number of the inhabitants of said city were deprived of what was reasonable and necessary for the irrigation of their land in said city, and for their domestic purposes; and the defendant city lost on its sale of said waters more than fifty dollars on account of the diversions in each of the said ditches respectively; whereupon on that day, and in order to supply the inhabitants and land of said city with sufficient water for said purposes, and in order to regulate and control the distribution of said waters in the most beneficial and regular manner, the said city, by its officers and agents, entered upon said ditches at their respective heads, and returned the water therein to said river and placed therein headgates.

That in and by said findings of fact and conclusions of law, said superior court found as conclusions of law from the facts so found that the plaintiffs in each of said actions were entitled to a judg-

ment against this defendant as prayed for in the amended complaint in each of said actions.

That thereafter, on the 21st day of September, 1880, a judgment was duly rendered and entered in said action, hereinbefore in this paragraph firstly mentioned, in favor of the plaintiffs in said action and against this defendant, awarding all of the relief prayed for in said amended complaint.

That thereafter, in accordance with the practice in the courts of said State, an appeal was duly taken by this defendant to the supreme court of the State of California, and thereafter, on the
119 14th day of June 1881, said supreme court then and there having jurisdiction of said appeal and said action, duly rendered and entered its judgment, reversing said judgment of said superior court and ordering that judgment be entered by said superior court upon said findings in favor of this defendant.

That thereafter, on the 4th day of August, 1881, a final judgment was duly rendered and entered in said last mentioned action by said superior court, wherein and whereby it was ordered, adjudged and decreed, that the plaintiffs in said action should take nothing by reason of their complaint, that this defendant should recover judgment against said plaintiffs for the sum of one dollar as damages, and that said plaintiffs should be and were perpetually enjoined and restrained, each and all of them, their and each of their agents, attorneys, servants and privies, from obstructing, diverting or using any of the waters of said Los Angeles river, without permission of this defendant, or in any wise interfering with the rights of this defendant, to said waters, and that this defendant should recover of said plaintiffs its costs of said action.

That said judgment has never been appealed from, but the same, upon the expiration of one year from its rendition, became, under the laws of said State, final, and the same has never been set aside, reversed, annulled or modified in any way whatever, but the same is now in full force and effect.

That, after the commencement of said last mentioned action, to wit, on the 4th day of August 1879, another action was commenced in said district court by Anastacio Felis, Jr., William Hunter Thomas Dunn, Jesse Hunter, James Hunter, and Amanda S. Crawford, as plaintiffs, against this defendant, and, in the complaint filed in said action, said plaintiffs alleged that more than forty years prior to the commencement of said action, the predecessors in interest of said plaintiffs, had constructed a ditch, connecting with said Los
120 Angeles river above the lands of said plaintiffs and about three miles above the northern boundary of said city of Los Angeles, and extending down to and upon said lands of said plaintiffs, and commonly known as the "Feliz ditch," and that said ditch was capable of carrying 100 inches of water measured under a four inch pressure, and was constructed for the purpose of appropriating water from said river to irrigate said lands of said plaintiffs, and that, as soon as said ditch was constructed, the predecessors in in-

terest of said plaintiffs, had, by means thereof, diverted the water of said river to the capacity of said ditch, and had appropriated the same for the irrigation of said lands of said plaintiffs and for domestic use thereon, and that, from the time of the construction of said ditch, up to the 25th day of May 1879, said plaintiffs and their predecessors in interest had had adverse, continuous and exclusive use of the waters of said river by means of said ditch to the extent of its capacity for irrigating said lands of said plaintiffs and for domestic use thereon, and that said plaintiffs were entitled to the use and enjoyment of the waters of said river through said ditch to the extent of the capacity thereof for the purposes aforesaid, and that, on the 25th day of May 1879, this defendant caused obstructions to be placed at the head of said ditch, and thereby wholly diverted from said ditch the water of said river, and prevented any water from flowing into said ditch, and that this defendant threatened to continue said obstruction and to prevent the water of said river from flowing in said ditch; and in and by said complaint, said plaintiffs prayed that this defendant be restrained from interfering with said ditch, or preventing the flow of water therein to the extent of its capacity, or interfering with said plaintiffs' use and enjoyment of the water through said ditch.

That thereafter, on the 26th day of September, 1879, this defendant filed its answer and cross complaint in said action, in which said cross complaint were set up substantially the same matters which were alleged in said answer and cross complaint so
121 filed in said action of Henry Elms and others against this defendant, and wherein the same relief was prayed as was prayed in said answer and cross complaint so filed in said suit of Henry Elms and others.

That thereafter, on the 16th day of December, 1879, said plaintiffs, in said action of Anastacio Felis, Jr., and others against this defendant, filed amendments to their said complaint, wherein the lands of plaintiffs were particularly described, the same comprising in part some of the lands described in said amended complaint, so filed in said suit of Henry Elms and others against this defendant as aforesaid, and all of said lands being located within said Rancho Los Felis.

That thereafter, said last mentioned action was duly tried before the said superior court, to which said court said action had been duly transferred by operation of law, as hereinbefore stated, with regard to said other action, and thereafter, to wit, on the 1st day of September 1880, said findings of fact and conclusions of law, which were so filed in said action of Henry Elms and others against this defendant as aforesaid, were filed in said action of Anastacio Felis, Jr., and others against this defendant, the said findings of fact and conclusions of law being in fact the same document, and being so filed in accordance with the stipulation of the attorneys of all of the parties to both of said actions and in accordance with the practice of the courts of said State; and that, all of the facts which were so

found with regard to said action of Henry Elms and others against this defendant, were found with regard to said action of Anastacio Felis, Jr., and others against this defendant.

That thereafter, on the 13th day of September 1880, a judgment was duly rendered and entered in said last mentioned action, awarding to the plaintiffs therein the relief against this defendant which had been prayed for in the complaint in said action.

122 That thereafter, this defendant, in accordance with the practice of the courts of said State, duly appealed to the supreme court of the State of California, from said last mentioned judgment, and that thereafter, to wit, on the 14th day of June 1881, said supreme court, then and there having jurisdiction of said appeal and of said action, rendered and entered its judgment reversing said last mentioned judgment of said superior court, and directing that judgment be entered in said superior court in favor of this defendant on said findings of fact.

That thereafter, to wit, on the 4th day of August 1881, a final judgment was duly rendered and entered in said last mentioned action by said superior court, wherein and whereby it was ordered, adjudged and decreed, that said plaintiffs should take nothing by reason of their complaint, that this defendant should have judgment against said plaintiffs for the sum of one dollar, as damages, and that said plaintiffs should be and were thereby perpetually enjoined and restrained, each and all of them, their and each of their agents, attorneys, servants and privies, from obstructing, diverting or using any of the waters of said Los Angeles river, without permission of this defendant, or in any wise interfering with the rights of this defendant to said waters, and that this defendant should recover of the plaintiffs its costs of said action.

That said judgment has never been appealed from, but the same upon the expiration of one year from its rendition, became, under the laws of said State, final; and the same has never been set aside, reversed, annulled or modified in any way whatever, but the same is now in full force and effect.

That, at the time of the commencement and final determination of each of said last mentioned actions, there was included within the corporate limits of said city of Los Angeles, a territory of the width of four hundred yards from north to south and extending

123 from the eastern to the western boundary of the four square leagues confirmed to said city of Los Angeles and embraced in the patent to said city, as mentioned in said amended bill of complaint, in addition to the said four square leagues, which said strip of additional land was then and is now bounded on the north by the southern boundary of said four square leagues; and that, at the times of the commencement and determination of each of said actions and for several years immediately prior thereto, the waters of said river were being used, to the extent, as this defendant is informed and believes, of a continuous flow of 250 inches of water, measured under a four inch pressure, during the irrigating season

extending from the 1st day of May to the 1st day of November, of each year, for the irrigation of said strip of land and for the domestic uses of the inhabitants living thereon.

That said fact, with regard to the use of said waters for irrigation and domestic use on said strip of additional land, was made an issue in each of said actions, and in each of said actions it was contended by the plaintiffs therein that, while such water was being used for the irrigation of said additional territory outside of the said four square leagues, said plaintiffs could not be prevented from using an amount of water which did not exceed the amount so used on said additional territory; and in and by said judgments of said supreme court, and in and by said judgments of said superior court, entered on the 4th day of August 1881, said issue was determined in favor of this defendant, and it was determined by said judgments that this defendant was entitled to the paramount right to the use of all of the waters of said Los Angeles river to the extent of its needs and the needs of its inhabitants for all purposes within the existing corporate limits of this defendant, whether such limits embraced only the original pueblo lands of this defendant, or additional territory added to said city of Los Angeles outside of said four square leagues.

124 That, as this defendant is informed and believes, the lands of the complainants in this suit, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato William Craig, John Craig, Emily Edna Craig, Joseph Hunter, Louis Salzegeber, Annie Salzegeber, and Samuel Hunter, were all owned by the plaintiffs in said two last mentioned actions, or by some of them, at the times of commencement and determination of each of said actions; and that the lands which were in the complaints in both of said actions, alleged to be irrigated from the ditches mentioned in said complaints, are, with the exception of one tract of 15 acres, included and embraced in the lands alleged in said amended bill of complaint herein to belong to the complainants named in this paragraph of this answer.

That, as this defendant is informed and believes, all of the complainants named in this paragraph of this answer, and all of their predecessors in interest by title acquired since the commencement of said two actions, had full notice and knowledge of the rendition and entry of both of said judgments, so rendered and entered on the 4th day of August 1881 as aforesaid.

That, by reason of the facts hereinbefore alleged in this paragraph of this answer, the said complainants, named in this paragraph of this answer, are, and each of them is, estopped to deny that this defendant is the owner of the paramount right to use so much of the waters of said Los Angeles river as may be needed for the uses of itself and its inhabitants, whether such use be made within the four square leagues confirmed and patented to this defendant, as alleged in said amended bill of complaint, or without said four square leagues, in other territory added to said city of Los Angeles subse-

quently to its original incorporation by said act of the legislature, passed April 4th, 1850.

125 Wherefore, this defendant, having shown to the court by this answer that it has no jurisdiction of this cause, prays that the said amended bill of complaint be dismissed for want of such jurisdiction.

THE CITY OF LOS ANGELES, Defendant,
By W. B. MATHEWS,
City Attorney and Solicitor for Defendant.

H. T. LEE &
J. R. SCOTT,
Of Counsel.

(Endorsed:) Original. No. 1121. Circuit court, ninth circuit, southern district of California, southern division. Robert Devine and others, complainants, *vs.* The City of Los Angeles, defendant. Answer to amended bill of complaint. Due service of the within answer to amended bill is hereby admitted this 17th day of December, 1904. McNutt & Hannon, Stephens & Stephens & Lloyd, attorneys for complainants. Filed Dec. 17 1904 Wm. M. Van Dyke, clerk. Chas. N. Williams deputy. W. B. Mathews & Lee & Scott, Los Angeles, California, attorneys for defendant.

126 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

ROBERT DEVINE and Others, Complainants,
vs.
THE CITY OF LOS ANGELES, Defendant. } No. 1121.

To Messrs. McNutt & Hannon, Messrs. Stephens & Stephens, and Warren E. Lloyd, Esq., solicitors for complainants:

Please take notice, that the defendant, by its counsel, will, on Tuesday the 27th day of December, 1904, at half past ten o'clock a. m. or as soon thereafter as counsel can be heard, move the above entitled court to dismiss the above entitled cause, on the ground that it appears from the amended bill of complaint and the answer of the defendant, in said cause, that said court has no jurisdiction of said cause, and that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said court; and for costs of defendant, and for such other or further order as may be proper in the premises.

Said motion will be based on said amended bill of complaint and answer thereto.

Respectfully, etc., W. B. MATHEWS,
City Attorney and Solicitor for Defendant.

H. T. LEE &
J. R. SCOTT,
Of Counsel.

Dated Dec. 20, 1904.

127 (Endorsed:) No. 1121. In the circuit court of the United States, for the southern district of California, Robert Devine and others, complainants, *vs.* City of Los Angeles, defendant. Notice of motion to dismiss cause. Due service of the within notice is hereby admitted this 20 day of December, 1904. McNutt & Hannon, Stephens & Stephens, & Warren E. Lloyd, attorneys for complainants. Filed Dec. 20 1904 Wm. M. Van Dyke, clerk. Chas. N. Williams, deputy. W. B. Mathews, attorney for defendant.

128 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

ROBERT DEVINE ET AL., Complainants, *vs.* THE CITY OF LOS ANGELES, Defendant. } No. 1121.

Exceptions Taken by Complainants, Jointly and Severally, to Certain Portions of the Answer of the Defendant, City of Los Angeles, to the Complainants' Amended Bill of Complainant for Impertinence.

The complainants in the above-entitled cause, to wit: Robert Devine, Jesse D. Hunter, Asa Hunter, Leonard C. Clarke, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato; William Craig, John Craig and Emily Edna Craig, by Emily Snyder, their guardian; Joseph Hunter, Louis Zalzegeber, Annie Salzegeber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown; Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; Hugh Glassell, Andrew Glassell; Philip H. Glassell by Hugh Glassell, his guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda Isabel Ramirez de Tononi, W. J. Boston, T. J.
129 Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederick Mohle; Emil G. Hirsch as administrator with the will annexed of the estate of Robert G. Rabe, deceased; David A. Kughen, W. B. Thorne, E. A. Marshall, Albert Grover, F. W. Van Wormer, Victor Carlson, E. J. Bodwell, H. S. Spinkle, W. F. Spinkle, Triumvirate Water Company, A. S. Robison, Marcus H. Cook, F. L. Cole, Abe Dufur, Henry Herberger, Edward A. Knapp, Colby Brown, A. W. Canfield, Gorden Bennett, Pete Purrier, L. A. Jones, Earl Anderson, W. M. Hoist, John E. Battelle, Luke Craig,

H. P. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pinoges, Henry C. Hayes, Clara Hayes, Mrs. W. B. Schafer, George C. Melrose, T. D. Buffington, Henry L. Comber, David B. Wyckhoff, W. M. Beeson, Amanda Huff, M. T. Miner, Hess Brewster, Hattie Brewster, Edward Ayres, Sherman A. Roberts, Marilla F. Pratt, Harrison Harvey Davenport, Dwight Griswold, Giovanni Gai, Tropico Water Company, Christ Kraft, Adelaide Tettentill, Leona E. Engelhardt, D. McNiver, K. S. Black, Joseph Edgar Moser, Charles Edward Moser, T. T. Lewis, Titus Phillips, Mary P. Pomroy, A. Lamar, Andrew Glassell, Susan Glassell Mitchell, M. J. F. Stearns, Clementine Lamer, Albert Bley, John A. Harris, Isaac G. Goode, Henry Braasch, Leonard N. Lockwood, E. K. Copeland, W. J. Wood, Mary B. Goggia, William Schomp, Cassius Edmunds, James Truman, Austin Truman, Daniel M. O'Connor; Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; A. R. Ballantyne, Henry Heide, Florence Malcom, M. J. Dolson, Josephine Doan, Day Hix Dunning, U. S. Ludwig, Jacob H. Dingman, Charles E. Patterson, Eli Doan, David J. Miller, Ezra M. Hurst, Frank W. Grow, John E. Swain, William W. Young, Paulina Gastreich, Henry Luttge, Sr., Almon S. D. Fulton, Henry Luke Comber, John T. Comber, Sara A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Frank A. Halberg, Edward E. Condon, John L. Johnson, William H. Thompson, Richard Eustice, Alfred L. Wright, Charlotte Richter,
130 William N. Hall, Orville Meyers, Henry Munger, Wilbur Purrier, Lydia Dufur, John R. White, John T. Adamson, Martin Pupka, Albert Grover, Laura Grover, A. Richards, Evan M. Crane, Harry Nelson, William Britton, Gustave Anderson, Annie Wright, George B. Edwards, Minnie Lindgrem, Edward Shively, J. M. Shively, Lena D. Buffington, Mary E. Harris, Esther Hoist, Mary C. Johnson, Martha J. Melrose, Julia E. Nicholaus, Mary N. Patterson, Jean Pinoges, William H. Thorne, R. Furrier, Charles E. Colton, Sam Gilmore, R. B. Shelton, Henry Williams, Lorenzo Pelanconi, Petra Pelanconi, Honorina P. Valla, Emil Bary, Alfred E. Hodgson, Martha A. Hodgson, Samuel W. Little, Clayton Ogier, Frank Ogier, Norman C. Bridge, H. D. Roberson, Alvira I. Clugage, David W. Dwire, Charles Forman, Jacob Goetz, A. P. Hoffman, Samuel P. Newbill, Emily Brack, Max H. Shelton, Florence A. Stough, Samuel Wilkinson, Mary A. Brown, Nina M. Thorn, Hester A. Williams, Clara Gilmore, Anna R. Goode, John C. Oestergard, Verdugo Canon Water Company, C. E. Grotzinger, Daisy B. Grotzinger, Joseph E. Bonner, Mrs. A. M. Worthing, and John Gilmore, jointly and severally, except to the parts and portions of the answer of defendant, City of Los Angeles, to said complainants' amended bill of complaint, for that the said parts of said answer hereinafter particularly referred to and described, and each and every of said parts, are impertinent and are not responsive to any allegations contained in complainants' amended bill of complaint, nor to any issue tendered by said bill of complaint or any part thereof.

The said parts of said answer so excepted to are:

I.

Beginning with the words "but, on the contrary," in line 1, page 11, and ending with the word "Hidalgo" in line 11, same page, in the words and figures following, to wit:

"but, on the contrary, this defendant alleges, upon information and belief, that all of the grants, alleged in said amended bill of
131 complaint to have been made of the ranchos also mentioned in said amended bill of complaint, were inchoate and imperfect, and did not pass an absolute fee simple title to the grantees in such grants, but all of such alleged grants were subject to revocation by the government by which it was made, and were confirmed by the United States of America only in satisfaction of the supposed moral obligation imposed on them by said treaty of Guadalupe Hidalgo."

II.

Beginning with the words "and there was nothing" in line 17, page 13, and ending with line 29, same page, in the words and figures following, to wit:

"and there was nothing contained in said proceedings, or in the decree of said commissioners, mentioned in paragraph XVI of said amended bill of complaint, or in said petition, to negative the presumption that it was intended to confirm to said mayor and common council by said decree, and to grant to said mayor and common council by said patent, all rights to the waters of said Los Angeles river, and to the use of the same, previously possessed by said pueblo of Los Angeles; and this defendant alleges that said patent did purport to grant to said mayor and common council of the city of Los Angeles all appurtenances belonging to the land therein granted, which said appurtenances embraced all of the waters of said Los Angeles river — of the right to the use of the same."

III.

Beginning with the words "which said appurtenances" in line 10, page 14, and ending with line 12, same page, in the words and figures following, to wit:

"which said appurtenances did embrace all of the waters of said Los Angeles river and the right to the use of the same."

132 IV.

Beginning with the words "by virtue" in line 27, page 14, and ending with the word "and" before the words "by virtue" in line 32, same page, in the words and figures following, to wit:

"by virtue of long and continued use and possession of said river and the waters thereof for a period of more than 120 years, and by

various grants and conveyances from private individuals, and by virtue of various judgments and decrees of courts of competent jurisdiction, and"—

V.

Beginning with the words "but this defendant denies" in line 24, page 14, and ending with the word "patent" in line 6, page 15, in the words and figures following, to wit:

"but this defendant denies that said sources of title are the only ones through which it claims such title; but, on the contrary, this defendant alleges that it also claims said paramount right by virtue of long and continued use and possession of said river and the waters thereof for a period of more than 120 years, and by various grants and conveyances from private individuals, and by virtue of various judgments and decrees of courts of competent jurisdiction, and by virtue of the patents to the Mayor and Common Council of the City of Los Angeles, hereinbefore referred to, and also by virtue of its ownership of various tracts of land belonging to this defendant which are riparian to said river, amounting in area to more than 4000 acres of land, and embracing the land through which said river flows in passing through the lands included in said last mentioned patent."

VI.

Beginning with the word "but" at the end of line 4, page 16, and ending with the words "Los Angeles" in line 16, same page, in the words and figures following, to wit:

133 "but this defendant alleges that there was mention made in said proceedings of the claim of the Mayor and Common Council of the City of Los Angeles, the petitioner named in said petition, for all of the rights possessed by said pueblo of Los Angeles with respect to the waters of said Los Angeles river, and that the decree, rendered by said board of land commissioners in said proceedings, had the effect of confirming said claim, and the patent, mentioned in said paragraph XVIIIa, had the effect of granting, to said Mayor and Common Council of the City of Los Angeles, all the rights with respect to the waters of said Los Angeles river which were possessed by said former pueblo of Los Angeles."

VII.

Beginning with line 17, page 16, and ending with line 1, page 17, in the words and figures following, to wit:

"This defendant denies that it, as successor of said pueblo, is now, the owner of any right or rights formerly owned by said pueblo, in the waters of said Los Angeles river, other than such as passed under the grant of the land confirmed to this defendant by the patent mentioned in said paragraph XVIIIa; but on the contrary, this defendant alleges that it is, and ever since said act of the legislature passed April 4th, 1850, it and its predecessors have been,

the owner of all of the rights possessed by said pueblo of Los Angeles with respect to the waters of said Los Angeles river, by and through other sources of title than the said confirmation and patent, and that said confirmation and patent were only in recognition of a previously granted and existing right, which had been vested in said pueblo of Los Angeles from its founding up to its dissolution by said act of the legislature, passed April 4th, 1850, and which became vested in the municipal corporation, created by said act, under and by virtue of the same."

134 VIII.

Beginning with the word "but" in line 27, page 30, and ending with line 5, page 31, in the words and figures following, to wit:

"but this defendant denies that there was, by said amendments, intended to be granted to this defendant any right with respect to the waters of said Los Angeles river, or the right or jurisdiction to manage or control, any waters, water rights, water bearing lands, water works, reservoirs, zanjas or ditches, which were, at the time of the adoption or approval or taking effect of said amendments, vested in the complainants, or any of them, or in the predecessor or predecessors of complainants, or any of them, or in any private individual or private corporation whatsoever."

IX.

Beginning with line 6 and ending with line 24, page 31, in the words and figures following to wit:

"This defendant denies that it claims that said amendments granted to this defendant any vested private right, if any, with respect to the waters of said Los Angeles river, or any right to manage or control, any waters, water rights, water bearing lands, water works, reservoirs, zanjas or ditches, which was, at the time of the adoption, approval or taking effect of said amendments, vested in the complainants, or any of them, or in the predecessor or predecessors of the complainants, or any of them, or in any private individual or private corporation whatsoever; but, on the contrary, this defendant disclaims having acquired in or by said amendments, any right, if any, with respect to the waters of said Los Angeles river, or any right to manage or control, any waters, water rights, water bearing lands, water works, reservoirs, zanjas or ditches, which was, at the time of the adoption, approval or taking effect of said amendments, vested in the complainants in this suit or any of them, or in the predecessor or predecessors of said complainants, or
135 any of them, or in any private individual or private corporation whatsoever."

X.

Beginning with line 13 and ending with line 32, page 35, in the words and figures following, to wit:

"This defendant also admits that it has asserted, and does assert, and has assumed, under its present charter, to wit, the charter and amendments thereof, adopted by vote of its electors and approved by the legislature, mentioned in said amended bill of complaint, the corporate power of taking physical management and control of all property belonging to this defendant, but not of any property belonging to the complainants, or any of them, nor where such physical management or control cannot be exercised without a breach of the peace or committing physical violence against said complainants, or any of them, or the agents or employees of said complainants, or any of them, nor where such property is located on or in any of the lands of said complainants, or any of them; and this defendant disclaims that said charter and amendments, and said act passed April 4th, 1850, or the other acts of the legislature mentioned in said paragraph XXIII, or any of them, gives or grants to this defendant the right to take physical or other management or control of any property belonging to complainants, or any of them, or to obstruct any ditch or conduit belonging to said complainants."

XI.

Beginning with the word "except" in line 5, page 36, and ending with line 16, same page, in the words and figures following, to wit:

"except that this defendant admits that if it should recognize that said complainants are entitled to use the waters of said Los
136 Angeles river, including the underground waters in the lands of complainants, for the irrigation of such lands, the effect would be to make such lands much more valuable than they are now, or ever were, but this defendant alleges, on information and belief, that such lands never had a value upon the basis or assumption that the owners thereof were entitled to use the waters of said Los Angeles river, including the underground waters in said lands, when this defendant had need of said waters for the use of itself and its inhabitants."

XII.

Beginning with the word "but" in line 10, page 44, and ending with line 23, same page, in the words and figures following, to wit:

"but, on the contrary, this defendant alleges, on information and belief, that, instead of the values of said complainants' land being destroyed or depreciated by any of the acts of the legislature and charters, and the claims of this defendant, mentioned in said amended bill of complaint, said complainants are endeavoring, by their claims, and by this suit, to add an additional value to their lands equal to the value of the right to use the waters of said river, including the

underground waters in said lands, for the irrigation thereof, which right, this defendant alleges, does not belong to the said lands in whole or in part, and said lands never had any value upon the assumption or basis that said right to said waters belonged or was appurtenant to said lands."

XIII.

Beginning with line 21, page 46, and ending with line 6, page 47, in the words and figures following, to wit:

"This defendant admits that if there were attached to said last mentioned lands the right to use sufficient waters from the surface stream of said river for the irrigation thereof, the value of
137 said lands would be increased and such right would be worth $100 per acre; but this defendant denies upon information and belief, that if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased more than $100 per acre.

"This defendant admits that, if the right were attached to said last mentioned lands to use the waters therein, which do not form part of the surface stream of said Los Angeles river, for the irrigation of said lands, such right would be worth and the value of said lands would be increased $50 per acre; but this defendant denies, on information and belief, that, if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased, more than $50 per acre."

XIV.

Beginning with line 10, page 48, and ending with line 27, same page, in the words and figures following, to wit:

"This defendant admits that if there were attached to said last mentioned lands, the right to use sufficient waters of the surface stream of said Los Angeles river for the irrigation thereof, the value of said lands would be increased and such right would be worth $100 per acre; but this defendant denies, upon information and belief, that if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased more than $100 per acre.

"This defendant admits that, if the right were attatched to said last mentioned lands to use the waters therein, which do not form part of the surface stream of said Los Angeles river, for the irrigation of said lands, such right would be worth, or the value of said lands would be increased $50 per acre; but this defendant denies, on information and belief, that, if such were the case, such
138 right would be worth, or the value of said lands, or any part thereof, would be increased, more than $50 per acre."

XV.

Beginning with line 10, page 49, and ending with line 26, same page, in the words and figures following, to wit:

"This defendant admits that if there were attached to said last mentioned lands the right to use sufficient of the waters of the surface stream of said Los Angeles river for the irrigation thereof, such right would be worth, and the value of said lands would be increased, $100 per acre; but this defendant denies, on information and belief, that if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased more than $100 per acre.

"This defendant admits that if there were attached to said last mentioned lands the right to use sufficient waters therein, other than the surface waters of said Los Angeles river, for the irrigation of said lands, such right would be worth, and the value of said lands would be increased, $50 per acre; but this defendant denies, on information and belief, that, if such were the case, such right would be worth or the value of said lands, or any part thereof, would be increased more than $50 per acre."

XVI.

Beginning with line 31, page 49, and ending with line 7, page 50, in the words and figures following, to wit:

"This defendant admits that if there were attached to the lands of complainants, described in said amended bill of complaint, the right to use sufficient of the waters in said lands, other than the surface waters of said Los Angeles river, for the irrigation of said lands, such right would be worth, and the value of said lands would be increased, $50 per acre; but this defendant denies, on information and belief, that, if such were the case, said right would be
139 worth or the value of said lands would be increased more than $50 per acre."

XVII.

Beginning with the word "but" in line 24, page 51, and ending with line 31, same page, in the words and figures following, to wit:

"but on the contrary, this defendant alleges on information and belief, that the only matter in controversy in this suit between the complainants, or any of them, and this defendant, or any of them, is the claim for damages against this defendant for its act in obstructing the ditches, hereinbefore alleged to have been obstructed by this defendant, which obstruction produced no damage whatever."

XVIII.

Beginning with line 1, page 52, and ending with line 1, page 55, in the words and figures following, to wit:

"That, in the year 1781, a pueblo was founded on the site of the

present city of Los Angeles, and within four square leagues of pueblo lands, alleged in said amended bill of complaint, to have been confirmed and patented to the city of Los Angeles, which said pueblo was so founded by the government of the Kingdom of Spain, to which the present State of California then belonged and was subject, pursuant to the laws of the said kingdom and the rules and regulations providing for the government of the provinces of the Californias, and thereupon said pueblo became entitled to all the rights of a pueblo, according to said laws, rules and regulations, including the sole and exclusive right to and absolute ownership of all of the waters of the Los Angeles river, mentioned in said amended bill of complaint, whether flowing upon or beneath the surface of the ground, and with the right to the sole and exclusive use of all of said waters in perpetuity.

140 "That said Los Angeles river was, at that time, and for many years thereafter, known as and called the Porciuncula river, and the same then rose and now rises several miles above said pueblo, and then ran and still runs down through the site of said pueblo and the lands now embraced within said city of Los Angeles; and, during the whole of the occupation and control of said pueblo by the Spanish and Mexican governments, the municipal authorities of said pueblo at all times exercised control of and claimed the exclusive right to use all of the waters of said river, which right was, during all of said time, recognized, acknowledged and allowed by the owners of all of the lands at the sources and bordering on said river, including the predecessors in interest of the complainants herein; and that, ever since the occupation and control of said pueblo by the Government of the United States and by the State of California, the municipal authorities of what is now the city of Los Angeles, with the exceptions hereinafter mentioned, have exercised the same control and claimed the same rights in regard to the waters of said river as were previously exercised or claimed by the authorities of said pueblo, as aforesaid; and that the municipal authorities of said pueblo and of said city so exercised control of said waters and claimed the exclusive right to their use as aforesaid, for the purpose of irrigating the lands of said pueblo and of said city and for the domestic and other uses of said pueblo and city and their inhabitants.

"That, within a short time, not exceeding one year, after the foundation of said pueblo, the municipal authorities thereof constructed a system of irrigation works, consisting of a dam on said river and a main ditch and various branches, and thereby

141 conveyed the waters of said river down to and upon several hundred acres of lands in said pueblo, where said waters were used for the irrigatien of said lands and for domestic use of the inhabitants of said pueblo; and that thereafter, from time to time, other lands of said pueblo were brought under irrigation, to an extent that required all of the waters of said river for the irrigation thereof, and all of said waters were in fact diverted from said river

and used for such irrigation during a period of many years during the Spanish and Mexican occupations and prior to the conquest of California by the United States.

"That from and after such conquest, and after the present State of California had become a part of the United States, the same use was made of the said waters of said river for the irrigation of the lands within said pueblo, and for domestic use of its inhabitants up to the time of the passage of the act of April 4th, 1850, mentioned in said amended bill of complaint, and during that period several thousand acres of land in said pueblo were irrigated from said river by the inhabitants of said pueblo under the management and control of the authorities of said pueblo, and from time to time, during said period, the extent of said irrigable lands was increased, and additional water works, consisting of ditches and other aqueducts, were constructed by which a more economical use of said waters was made, so as to enable a greater quantity of land in said pueblo to be irrigated with said waters.

"That from and after the incorporation of the city of Los Angeles by said act, passed April 4th, 1850, the municipal authorities of said city, from time to time, up to about 18 years ago, continued to construct additional works for the more economical diversion, impounding and distribution of said waters for use in irrigating the
142 irrigable lands in said city, consisting of many thousands of acres, and for the domestic use of said inhabitants, and, in the construction of such works expended several hundred thousand dollars.

"That, within the past 18 years, nearly all of said irrigable lands have been subdivided into building lots and covered with houses, which have been and are occupied by many thousands of people, so that all of the waters, which had been previously used for the irrigation of said lands, excepting the portion thereof which has been diverted by the complainants within the past five years, have been used for the uses of said city and its inhabitants other than for irrigation, and all of the waters of said river have, during the dry season of the year, extending from the 1st day of May to the 1st day of November of each year, and a great portion of said waters during the rest of the year, been needed for said uses.

"That during said period, this defendant has expended many millions of dollars for the construction of water works for the diversion, impounding and distribution of said waters for its municipal uses and for the uses of its inhabitants."

XIX.

Lines 6 and 7, page 55, in the words and figures following, to wit:

"That this defendant has no other source of supply except said river."

XX.

Beginning with line 8, page 55, and ending with line 27, page 57, in the words and figures following, to wit:

"That, during the Mexican regime in California, said pueblo gave a license to the then owner of the Rancho Los Felis, mentioned in said amended bill of complaint, to take water from said river with which to irrigate a portion of said Rancho Los Felis;
143 and, under and by virtue of said license, said Maria Ignacio Berdugo constructed a ditch by means of which she conveyed a portion of the surface waters of said river to and upon said portion of said rancho, and she and her successors in interest continued to divert and use waters from said river for the irrigation of said portion of said rancho, under and by virtue of said license, until the year 1885.

"That, in the year 1868, the successors in interest of said Maria Ignacio Berdugo, as to a portion of said rancho, repudiated the license that had been so given by said pueblo and set up a claim to the right to use said waters of said river, so previously diverted and used by her and them, for the irrigation of said portion of said rancho, independent of said license, and as belonging to them by virtue of their ownership of land riparian to said river.

"That during said period between some time in 1868 and 1885, litigation was had between this defendant and said successors in interest of said Maria Ignacio Berdugo with respect to the waters so diverted by them as aforesaid, and it was, in said litigation, determined that this defendant had no need of said waters, so diverted, and that therefore this defendant was not entitled to enjoin the diversion and use thereof by said successors in interest.

"That thereafter, in the years 1884 and 1885, by deeds of conveyance, the successor in interest of said Maria Ignacia Berdugo, to wit, Griffith Jenkins Griffith, as to last mentioned portion of said rancho, conveyed all of his interest in the waters of said river and in the right to use the same to this defendant.

"That thereafter, to wit, on the 18th day of August, 1885, and while said Griffith Jenkins Griffith was the owner of all of the lands in said rancho on which said waters had been used as afore-
144 said under said license, this defendant commenced an action against him in the superior court of the county of Los Angeles, State of California, in which county said lands were situated, and which said court had jurisdiction of said action; and thereafter, to wit, on the 24th day of August, 1885, a judgment or decree was duly rendered, given and entered in said action by said superior court, whereby it was decreed that this defendant, The City of Los Angeles, was then the owner of the waters of said Los Angeles river, and entitled to the full and free use of all water flowing in said river, and in all the ditches connecting with said river.

"That, during the Mexican regime in California, said Maria Ignacia Berdugo, or her licensees, under a license from said pueblo,

of Los Angeles, diverted waters from said Los Angeles river and used the same for the irrigation of lands in said Rancho Los Felis, and about the same time the owners of lands in said pueblo, located on the west side of said Los Angeles river, by permission of the authorities of said pueblo, also diverted water from said river for the irrigation of their lands in said pueblo, commonly known as the Corralitos.

"That said last mentioned diversion and use of said waters by said Maria Ignacia Berdugo, or her licensees, and said owner of said Corralitos, continued up to the year 1876 without any denial on the part of any of said parties and their successors in interest, of the right of said pueblo up to the 4th day of April, 1850, or of said city after that time, to the ownership and control of all the waters of said river; but, in the year 1876, the persons, making use of said last mentioned waters, set up a claim of right in themselves to said waters,
and repudiated the license from said pueblo under which they
145 had been using said waters, and thereupon brought two suits against this defendant in the then district court of the 17th judicial district of the State of California in and for the county of Los Angeles in the year 1879 to restrain this defendant from interfering with the use of said waters by the plaintiffs in such suits.

"That thereafter, on the 4th day of August, 1881, a final decree was entered in each of said suits in favor of this defendant, enjoining said plaintiffs in both of said suits from diverting any of the waters of said river except by permission of this defendant, The City of Los Angeles; and thereafter, up to the year 1903, all of said parties and their successors in interest, recognized the right to and ownership by this defendant of all the waters of said river and the right to use the same, and only made use of the waters of said river by permission of this defendant and as its licensees, under its control and regulation.

XXI.

Beginning with line 28, page 57, and ending with line 20, page 59, in the words and figures following, to wit:

"That, within the past twenty years, claims have been made by various persons to the right, as against this defendant, to divert the waters of the two affluents of said river, one of said affluents having been newly formed by excessive rainfall within that period, and the other being a pond or lake created by artificial means more than fifty years ago, and the waters of both said affluents were so used; but this defendant has since obtained a decree of a court of competent jurisdiction of said county of Los Angeles enjoining the further diversion or use of either of said affluents by the parties so making use of the same.

"That within the past 12 years, certain owners of lands in which
the underground waters of said river flows, have set up a
146 claim that said underground waters were not part of the said river, but were a part of the soil, and that such owners were entitled to take and appropriate said waters for their own use, and,

in furtherance of such claims great numbers of said parties, including some of complainants, have constructed wells, and are engaged in pumping large quantities of said water and thereby diminishing the surface flow of said river; and it is for the purpose of preventing such diminution of the surface flow of said river, that this defendant is bringing, and contemplates bringing, the actions against complainants which are referred to in said amended bill of complaint.

"That, until within the past five years, the abstraction of the underground waters in the lands of those of the complainants, on whose land wells have been constructed, as aforesaid, did not interfere with the supply of water required by this defendant for the uses of itself and its inhabitants; but, within the past three years, the amount of diversion, by means of said wells, has increased so much, and the needs of said city and its inhabitants have also so greatly increased, that the waters of said river, which reach the surface stream thereof, and the underground diversion works of this defendant, have not been sufficient to supply this city and its inhabitants with the water needed by it and them.

"That, with the exceptions in this paragraph of this answer stated, said pueblo of Los Angeles, from the time of its foundation in the year 1781 up to the incorporation of said pueblo as a city by said act of the legislature, passed April 4th, 1850, by its municipal authorities, and by its servants, agents and officers, continuously, exclusively and adversely to the whole world, used all of the waters of said Los Angeles river for the irrigation of the four square
147 leagues, embraced in said patent to the city of Los Angeles, mentioned in said amended bill of complaint, and for other public municipal purposes of said pueblo, and for the domestic use of its inhabitants, claiming the right so to do by virtue of its said ownership of said waters and of its said right to use the same; and that, ever since said incorporation of said city of Los Angeles, this defendant and its predecessors have (except as hereinbefore otherwise alleged), continuously, exclusively and adversely to the whole world, used all of said waters of said river for said purposes under the claim of ownership of said waters and of said right as successor of said Mexican pueblo and by virtue of the long continued user and control of said waters by said pueblo and said city as aforesaid.

XXII.

Beginning with line 21, page 59, and ending with line 22, page 62, in the words and figures following, to wit:

"That, in the existing charter of this defendant, as amended by the amendments mentioned in said amended bill of complaint, a department was created for the management and control of the water works, water rights and waters of this defendant, and, in said charter, it is provided that this defendant should convey to the commissioners, managing said department, all property, including water

works, water rights and lands, exclusive of the waters of said Los Angeles river and the right to use the same, which the council of this defendant might deem necessary to be used by said department in the management and control of the water works, waters and water rights of this defendant, for supplying this defendant and its inhabitants with water.

"That, in accordance with said requirements of said charter, this defendant has conveyed to said commissioners the title to
148 various portions of the lands, belonging to this defendant at the time of such conveyance, hereinafter described, and said commissioners now hold said lands in trust for this defendant for the purpose of managing and controlling the water works, waters and water rights of this defendant.

"That there are now owned by this defendant, in its own corporate name, or in the name of said commissioners, the following described lands, which are riparian to said Los Angeles river, to wit:

"Blocks 19, 21, 23, 24, 37, 38, 66, 39, 40, 42, 58, 59 and 65, the east half of block 22, the east half of the north half of block 44, the south half of block 45, the west half of the north half of block 45, the east half of the north half of block 56, the west half of block 55, the north half of block 41, the east half of the south half of block 43, the west half of block 57, the west half of the east half of the south half of block 57, and the east half of the north half of block 64, all of the Rancho Providencia and Scott tract, according to the map thereof recorded in Book 23 of Miscellaneous Records, page 25, in the office of the county recorder of the county of Los Angeles, State of California, containing about 725 acres of land.

"Also that tract of land bounded north and northeast by blocks 65, 66, 67, 68, 69, 77, 79 and 80, of said Rancho Providencia and Scott tract, according to said recorded map thereof, on the south and southeast by the southeastern line of said Rancho Providencia, being the northern line of the Rancho Los Felis and land of the Grant's Pass Land and Water Company, and on the west by block 71 of said Rancho Providencia and Scott tract, according to said recorded map thereof, containing 288.48 acres of land.

149 "Also all that tract of land bounded on the north by the northern line of said Rancho Los Felis, on the east by the eastern line of said Rancho Los Felis, on the south by that portion of the Rancho Los Felis formerly known as the Lick tract, and a part of which is now — as Ivanhoe, and on the west by the western line of said Rancho Los Felis, excepting that portion thereof belonging to the Briswalter Land and Water Company, which portion does not touch the surface stream of said river, and is part of the land owned by said Griffith Jenkins Griffith at the time of his conveyance to this defendant, and at the time of the rendition and entry of the decree against him in favor of this defendant, hereinbefore referred to; said tract of land, after deducting said excepted portion, containing about 3000 acres of land.

"Also lot 7 in block 81 of said Rancho Providencia and Scott tract, according to said recorded map thereof, containing 20 acres.

"Also that tract of land in the Rancho San Rafael, commencing at the southwestern corner of the land of complainant, J. D. Watson; thence along said land easterly 805.29 feet; thence S. 3° 13′ E. 749.8 feet; thence S. 25° 23′ W. 1303.29 feet to the eastern line of the Rancho Los Felis; and thence along the same N. 8° 30′ W. 1947.32 feet to the place of beginning; containing 23.15 acres, but subject to the rights reserved to Hugh Glassell in the deed from him and wife to the Crystal Springs Land and Water Company, recorded in Book 804 of Deeds page 274 in said recorder's office, the said reservation not including any right with respect to the waters of said river or the waters in said lands.

"Also that tract commencing at the northeast corner of lot
150 . 12 block 2 of the Ivanhoe tract, according to the map thereof recorded in Book 17 of Miscellaneous Records pages 65 *et seq.*, in said recorder's office; thence N. 28½° E. 6.15 chains; thence N. 79¾° W. 7 chains; thence N. 46° W. 40.45 chains; thence S. 86½° W. 8.41 chains; thence S. 25½° E. 12.50 chains; thence N. 29½° E. 2.20 chains; thence S. 35° E. 13 chains; thence S. 60½° E. 9.92 chains; thence S. 46½° E. 6.43 chains; thence S. 59½° E. 9 chains; and thence S. 84¾° E. 6.73 chains to the place of beginning; containing 43.62 acres of land, and being bounded on the north by the north line of the Lick tract, on the east by the east line of the Lick tract, on the south by the south line of the Lick tract, and on the west by the east line of the Ivanhoe tract.

"Also a tract of land extending from the point of intersection of said Los Angeles river with the northern boundary of the pueblo lands of said city of Los Angeles, described in the patent to said city, mentioned in said amended bill of complaint, down to the point of intersection of said river with the southern line of said pueblo lands, and embracing an area of several hundred acres of land.

"Also the tract of land, situated in said city of Los Angeles, commonly known as Elysian park, containing 400 acres of land."

XXIII.

Beginning with line 24, page 62, and ending with line 24, page 76, in the words and figures following, to wit:

"That heretofore, to wit, on the 15th day of July, 1879, Henry Elms, Thomas Brooks, Juana Chaves, Manuela Chaves, F. M. Covert, Gabriel Chaves, Keziah Hunter, and William Hunter, as plaintiffs, commenced an action against this defendant in the then district court of the 17th judicial district of the State of California, in and for the county of Los Angeles, which said court then and there
151 had jurisdiction of said action; and, in the complaint therein said plaintiffs alleged that they owned a certain water ditch commencing at a point on the Los Angeles river in the Rancho Los Felis, mentioned in the bill of complaint herein, a short distance

above the city of Los Angeles, in said county, and running through the lands of said plaintiffs in said action, a distance of about one and one-half miles, and commonly known as the "Chaves ditch" or the "Corralitos ditch," and that such ditch was constructed by their predecessor in interest, more than 30 years before the filing of said complaint, and that said predecessor and his successors, including said plaintiffs, had possessed and used said ditch for conducting water from said Los Angeles river to and upon said lands of said plaintiffs for domestic use and for irrigating said lands, to the extent of 100 square inches measured under a four inch pressure, ever since the construction of said ditch, and also that this defendant did, on the 25th day of May, 1879, entirely obstruct the flow of water through said ditch, and had continued so to obstruct such flow up to the commencement of said action so as to prevent water from flowing through said ditch from said river: and in said complaint said plaintiffs prayed judgment that this defendant be restrained from obstructing said ditch and from interfering with the use of the waters of said Los Angeles river that had been accustomed to flow in said ditch.

"That thereafter, on the 6th day of October, 1879, an amended complaint was filed in said action by the same plaintiffs against this defendant, in which the lands of said plaintiffs were particularly described as embracing a general tract known as the Corralitos, and in which amended complaint it was alleged that all of said lands of plaintiffs were riparian to said Los Angeles river, and that all
152 of said lands were entitled to a reasonable use of the waters of said river for domestic use upon and irrigation of said lands, and that the use of the quantity of water flowing through said ditch was no more than what said lands were reasonably entitled to as riparian to said river; and in said amended complaint said plaintiffs prayed judgment that they be quieted in their rights and titles to said ditch and the right to use the waters of said Los Angeles river to the extent of the quantity which was accustomed to flow in said ditch, and that this defendant be perpetually enjoined and restrained from obstructing or in any manner interfering with said ditch, and from interfering with plaintiffs in the use of the waters of said river that might or ought to flow in said ditch or would flow when the obstruction of said ditch should be removed, and from preventing the plaintiffs from appropriating said waters by and causing the same to flow through said ditch, and from exercising or assuming to exercise any authority over said ditch or said water flowing or to flow therein to the prejudice of said plaintiffs.

"That thereafter, on the 20th day of October, 1879, this defendant filed its answer and cross complaint in said action, wherein it was alleged, among other things, that this defendant was founded as a Spanish pueblo in or about the year 1786, on the present site of the city of Los Angeles, on the banks of the Los Angeles river, that said river was unnavigable, that said pueblo was, from its first settlement, the owner of and entitled to the use of the water of said river for irrigating and domestic purposes for its inhabitants, and

did, through its officers and others, from the time of its first settlement until the date of incorporation of this defendant on the 4th day of April 1850, appropriate, claim and use, by means of
153 ditches etc. for irrigation by the inhabitants of said pueblo of lands within its limits and for domestic uses of its inhabitants, all of the water flowing in said river, and did, during all of said period exercise control of the use of the water of said river as regarded distribution for said purposes both within and without the limits of said pueblo, and its right to so control and distribute was always recognized by all persons living on the banks of said river, and said right was recognized by the laws of Spain and Mexico and all the inhabitants of said pueblo, that this defendant was incorporated by the legislature of the State of California on the 4th day of April 1850 and succeeded to all the rights of said pueblo in regard to property, which rights were repeatedly recognized by the legislature of said State, that this defendant had adopted ordinances for the distribution of the waters of said river for irrigation, and without systematic arrangement of distribution of said waters there was not sufficient water for all the inhabitants of said city who were necessitated to use the same, that, by reason of the system adopted by this defendant, and the extensive improvements and facilities such as reservoirs, tunnels, ditches and flumes, costing more than $250,000, all of the irrigators of said city were able to obtain water, that this defendant, ever since its incorporation, had appropriated, owned and been entitled to the free and exclusive use and enjoyment for said purposes of all of the waters of said river, which was then and always had been a public use, and had imposed fines on all persons using said water without permission of this defendant, and the jurisdiction thus exercised had been recognized by the courts and by the legislature and all persons residing in and without said city, that large quantities of the lands within said city were
15[illegible] planted in fruit trees and vines requiring abundant irrigation, and the sewers of said city required flushing and the streets sprinkling, and the inhabitants of said city, numbering 15,000 people, had need of several million gallons of water daily for domestic purposes and said city also required water for the extinguishment of fires, and for all of said purposes large quantities of the waters of said river, which were the only source of supply of said city, were required, that the plaintiffs in said action, on the 25th day of May, 1879, and at other times, had wrongfully obstructed the flow of the waters of said river, and had diverted the same upon the lands of said plaintiffs, and had threatened to continue to so obstruct the flow of the waters of said river and divert said waters as often as desired by them, which waters were then required for irrigation within said city and by its inhabitants, and that unless said plaintiffs were restrained from doing said acts, great and irreparable injury would be done to this defendant and its inhabitants; and in and by said amended complaint, this defendant prayed for an order perpetually enjoining said plaintiffs from obstructing, diverting or

using any of the waters of said river without the permission of this defendant, or in any way interfering with the rights of this defendant to said waters, and for general relief.

"That thereafter, said action was regularly tried before the superior court of said county, which, under the constitution of said State, adopted in the year 1879, had succeeded to the powers and jurisdiction of said district court with regard to said action, and to which said superior court said action had been duly transferred by operation of law, and thereafter, on the 1st day of September 1880, in accordance with the practice then prevailing in the courts of said
State, written findings of fact and conclusions of law were
155 duly made and filed by said superior court in said action, and also in the action of Anastacio Felis, Jr., and others against this defendant, hereinafter mentioned, wherein said court found that in the year of 1781, pursuant to the laws of Spain and the rules and regulations providing for the government of the provinces of California, Los Angeles was duly formed into a pueblo according to said laws, rules, and regulations, and all its rights as such pueblo since then were duly recognized and allowed by the Spanish and Mexican governments during their respective occupations and control of the same, and also by the respective provincial and departmental authorities of California; that the river of Los Angeles rises several miles above the former pueblo of Los Angeles, and runs down through said pueblo, and during the occupation and control of said pueblo by the Mexican government, the municipal authorities at all times exercised control of and claimed the exclusive right to use the waters of said river and all thereof, which right was duly recognized, acknowledged, and allowed by the owners of the land at the source and bordering on said river, including the grantors of the plaintiffs, and that ever since the occupation and control of said pueblo by the Government of the United States, and that of the State of California, the municipal authorities of what is now the city of Los Angeles, have exercised the same control and claimed the same rights in regard to the waters of said river as was previously done by the authorities of said pueblo, except within the last two or three years, when the right of said city to said waters has been disputed by the plaintiffs and others, and a right claimed by them to use said waters; that the municipal authorities of said pueblo and said city exercised control of said waters, and claimed the exclusive right to their use as aforesaid, for the purpose of irrigating the lands of said
156 pueblo and city, and for the domestic use of the inhabitants thereof; that the waters of said river is necessary for the irrigation of the land within said city, and so confirmed as aforesaid, and also for the domestic use of its inhabitants, but until within the last two or three years all of said water has not been required in said city. For the last few years, during the irrigating season, all of said waters, as they naturally flow in said river, have not been sufficient for the irrigation of the irrigable portion of said

lands, and the domestic use of said inhabitants; and said city, at an expense of more than one hundred thousand dollars, has constructed reservoirs to husband and save said waters for uses in said city; that a large portion of the irrigable lands of said city are not irrigated, and never have been irrigated, which will require more than all the waters of said river, with the present facilities and resources of said city for husbanding and supplying the same; that said city has been supplying the inhabitants of said city with said water for the uses aforesaid, and when there has been more than has been required for use in the city it has been and still does sell to parties residing without, and to be used on lands without, the city; that ever since about the year 1844 the plaintiffs and their grantors have owned, possessed and cultivated the land claimed by them in their complaints, and have ever since irrigated the same from said river through the respective ditches mentioned in the respective complaints, to wit, the Chavez and Feliz ditches, to about the same extent as now irrigated by the plaintiffs, using the waters, also, for domestic purposes; and the waters of said river are necessary for the irrigation of said lands and for domestic use; but the uses of said waters were originally, by permission and under consent from
157 the municipal authorities of said pueblo, and have ever since been, with such permission and consent, and not adversely nor claimed as of right until within the last three years, during which time (the last three years) plaintiffs have claimed, and still claim, the right to use said waters on their land and for domestic purposes; that plaintiffs are the respective owners of the parcels of land claimed by them in their complaint, and the respective ditches therein referred to are used and are necessary to irrigate the same; and said ditches have always been in the exclusive possession and control of said plaintiffs and their grantors from about the year 1844 until the 25th day of May, 1879; and that on the 25th day of May, 1879, the plaintiffs were respectively and for several days prior thereto, diverting through said ditches, to the extent of about one hundred inches in each of said ditches, the waters of said river to and upon their respective tracts of land aforesaid, and using the same thereon for irrigation and domestic purposes, and the same was no more than was reasonable and necessary therefor; and by reason of such uses by plaintiffs, water became diminished in said river, and sufficient thereof could not and did not reach said city or its waterworks (plaintiffs' said ditches having their points of diversions above said city and its waterworks) to supply what was reasonable and necessary for irrigation and domestic use in said city; and by reason of such diversion by plaintiffs a number of the inhabitants of said city were deprived of what was reasonable and necessary for the irrigation of their land in said city, and for their domestic purposes; and the defendant city lost on its sale of said waters more than fifty dollars on account of the diversions in each of the said ditches respectively; whereupon on that day, and in order to
158 supply the inhabitants and land of said city with sufficient water for said purposes, and in order to regulate and control

the distribution of said waters in the most beneficial and regular manner, the said city, by its officers and agents, entered upon said ditches at their respective heads, and returned the water therein to said river and placed therein headgates.

"That in and by said findings of fact and conclusions of law, said superior court found as conclusions of law from the facts so found that the plaintiffs in each of said actions were entitled to a judgment against this defendant as prayed for in the amended complaint in each of said actions.

"That thereafter, on the 21st day of September, 1880, a judgment was duly rendered and entered in said action, hereinbefore in this paragraph firstly mentioned, in favor of the plaintiffs in said action and against this defendant, awarding all of the relief prayed for in said amended complaint.

"That thereafter, in accordance with the practice in the courts of said State, an appeal was duly taken by this defendant to the supreme court of the State of California, and thereafter, on the 14th day of June, 1881, said supreme court then and there having jurisdiction of said appeal and of said action, duly rendered and entered its judgment, reversing said judgment of said superior court, and ordering that judgment be entered by said superior court upon said findings in favor of this defendant.

"That thereafter, on the 4th day of August 1881, a final judgment was duly rendered and entered in said last mentioned action by said superior court, wherein and whereby it was ordered, adjudged and decreed, that the plaintiffs in said action should take nothing by reason of their complaint, that this defendant should
159 recover judgment against said plaintiffs for the sum of one dollar, as damages, and that said plaintiffs should be and were perpetually enjoined and restrained, each and all of them, their and each of their agents, attorneys, servants and privies, from obstructing, diverting or using any of the waters of said Los Angeles river, without permission of this defendant, or in any wise interfering with the rights of this defendant, to said waters and that this defendant should recover of said plaintiffs its costs of said action.

"That said judgment has never been appealed from, but the same, upon the expiration of one year from its rendition became, under the laws of said State final; and the same has never been set aside, reversed, annulled or modified in any way whatever, but the same is now in full force and effect.

"That, after the commencement of said last mentioned action, to wit, on the 4th day of August, 1879, another action was commenced in said district court by Anastacio Felis Jr., William Hunter, Thomas Dunn, Jesse Hunter, James Hunter, and Amanda S. Crawford, as plaintiffs, against this defendant, and, in the complaint filed in said action, said plaintiffs alleged that more than forty years prior to the commencement of said action, the predecessors in interest of said plaintiffs, had constructed a ditch, connecting with said Los

Angeles river above the lands of said plaintiffs and about three miles above the northern boundary of said city of Los Angeles, and extending down to and upon said lands of said plaintiffs, and commonly known as the "Feliz ditch," and that said ditch was capable of carrying 100 inches of water measured under a four inch pressure, and was constructed for the purpose of appropriating water from said river to irrigate said lands of said plaintiffs, and that, as soon as said ditch was constructed, the predecessors in
160 interest of said plaintiffs, had, by means thereof, diverted the water of said river to the capacity of said ditch, and had appropriated the same for the irrigation of said lands of said plaintiffs and for domestic use thereon, and that, from the time of the construction of said ditch, up to the 25th day of May 1879, said plaintiffs and their predecessors in interest had had adverse, continuous and exclusive use of the waters of said river by means of said ditch to the extent of its capacity for irrigating said lands of said plaintiffs and for domestic use thereon, and that said plaintiffs were entitled to the use and enjoyment of the waters of said river through said ditch to the extent of the capacity thereof for the purposes aforesaid, and that, on the 25th day of May 1879, this defendant caused obstructions to be placed at the head of said ditch, and thereby wholly diverted from said ditch the water of said river, and prevented any water from flowing into said ditch, and that this defendant threatened to continue said obstruction and to prevent the water of said river from flowing in said ditch; and in and by said complaint, said plaintiffs prayed that this defendant be restrained from interfering with said ditch, or preventing the flow of water therein to the extent of its capacity, or interfering with said plaintiffs' use and enjoyment of the water through said ditch.

"That thereafter, on the 26th day of September, 1879, this defendant filed its answer and cross complaint in said action, in which said cross complaint were set up substantially the same matters which were alleged in said answer and cross complaint, so filed in said action of Henry Elms and others against this defendant, and wherein the same relief was prayed as was prayed in said answer and cross complaint so filed in said suit of Henry Elms and others.

161 "That thereafter, on the 16th day of December, 1879, said plaintiffs, in said action of Anastacio Felis, Jr., and others against this defendant filed amendments to their said complaint, wherein the lands of plaintiffs were particularly described, the same comprising in part some of the lands described in said amended complaint, so filed in said suit of Henry Elms and others against this defendant as aforesaid, and all of said lands being located within said Rancho Los Felis.

"That thereafter, said last mentioned action was duly tried before the said superior court, to which said court said action had been duly transferred by operation of law, as hereinbefore stated, with regard to said other action, and thereafter, to wit, on the 1st day of

September, 1880, said findings of fact and conclusions of law, which were so filed in said action of Henry Elms and others against this defendant as aforesaid, were filed in said action of Anastacio Felis, Jr., and others against this defendant, the said findings of fact and conclusions of law being in fact the same document, and being so filed in accordance with the stipulation of the attorneys of all of the parties to both of said actions and in accordance with the practice of the courts of said State; and that, all of the facts which were so found with regard to said action of Henry Elms and others against this defendant, were found with regard to said action of Anastacio Felis, Jr., and others against this defendant.

"That thereafter, on the 13th day of September 1880, a judgment was duly rendered and entered in said last mentioned action, awarding to the plaintiffs therein the relief against this defendant which had been prayed for in the complaint in said action.

162 "That thereafter, this defendant, in accordance with the practice of the courts of said State, duly appealed to the supreme court of the State of California, from said last mentioned judgment, and that thereafter, to wit, on the 14th day of June 1881, said supreme court, then and there having jurisdiction of said appeal and of said action, rendered and entered its judgment reversing said last mentioned judgment of said superior court, and directing that judgment be entered in said superior court in favor of this defendant on said findings of fact.

"That thereafter, to wit, on the 4th day of August, 1881, a final judgment was duly rendered and entered in said last mentioned action by said superior court, wherein and whereby it was ordered, adjudged and decreed, that said plaintiffs should take nothing by reason of their complaint, that this defendant should have judgment against said plaintiffs for the sum of one dollar, as damages, and that said plaintiffs should be and were thereby perpetually enjoined and restrained, each and all of them, their and each of their agents, attorneys, servants and privies, from obstructing, diverting or using any of the waters of said Los Angeles river, without permission of this defendant, or in any wise interfering with the rights of this defendant to said waters, and that this defendant should recover of the plaintiffs its costs of said action.

"That said judgment has never been appealed from, but the same, upon the expiration of one year from its rendition, became, under the laws of said State, final, and the same has never been set aside, reversed, annulled or modified in any way whatever, but the same is now in full force and effect.

"That, at the time of the commencement and final deter-
163 mination of each of said last mentioned actions, there was included within the corporate limits of said city of Los Angeles, a territory of the width of four hundred yards from north to south and extending from the eastern to the western boundary of the four square leagues confirmed to said city of Los Angeles and embraced in the patent to said city, as mentioned in said amended

bill of complaint, in addition to the said four square leagues, which said strip of additional land was then and is now bounded on the north by the southern boundary of said four square leagues; and that, at the times of the commencement and determination of each of said actions and for several years immediately prior thereto, the waters of said river were being used, to the extent, as this defendant is informed and believes, of a continuous flow of 250 inches of water, measured under a four inch pressure, during the irrigating season extending from the 1st day of May to the 1st day of November of each year, for the irrigation of said strip of land and for the domestic uses of the inhabitants living thereon.

"That said fact, with regard to the use of said waters for irrigation and domestic use on said strip of additional land, was made an issue in each of said actions, and in each of said actions it was contended by the plaintiffs therein that, while such water was being used for the irrigation of said additional territory outside of the said four square leagues, said plaintiffs could not be prevented from using an amount of water which did not exceed the amount so used on said additional territory; and in and by said judgments of said supreme court, and in and by said judgments of said superior court, entered on the 4th day of August, 1881, said issue was determined in favor of this defendant, and it was determined by said judgments

164 that this defendant was entitled to the paramount right to the use of all of the waters of said Los Angeles river to the extent of its needs and the needs of its inhabitants for all purposes within the existing corporate limits of this defendant, whether such limits embraced only the original pueblo lands of this defendant, or additional territory added to said city of Los Angeles outside of said four square leagues.

"That, as this defendant is informed and believes, the lands of the complainants in this suit, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato, William Craig, John Craig, Emily Edna Craig, Joseph Hunter, Louis Salzgeber, Annie Salzgeber, and Samuel Hunter, were all owned by the plaintiffs in said two last mentioned actions, or by some of them, at the times of commencement and determination of each of said actions; and that the lands which were, in the complaints in both of said actions, alleged to be irrigated from the ditches mentioned in said complaints, are, with the exception of one tract of 15 acres, included and embraced in the lands alleged in said amended bill of complaint herein to belong to the complainants named in this paragraph of this answer.

"That, as this defendant is informed and believes, all of the complainants named in this paragraph of this answer, and all of their predecessors in interest by title acquired since the commencement of said two actions, had full notice and knowledge of the rendition and entry of both of said judgments, so rendered and entered on the 4th day of August 1881 as aforesaid.

"That, by reason of the facts hereinbefore alleged in this paragraph of this answer, the said complainants, named in this paragraph of this answer, are, and each of them is, estopped to deny that this defendant is the owner of the paramount right to use so much
165 of the waters of said Los Angeles river as may be needed for the uses of itself and its inhabitants, whether such use be made within the four square leagues confirmed and patented to this defendant, as alleged in said amended bill of complaint, or without said four square leagues, in other territory added to said city of Los Angeles subsequently to its original incorporation by said act of the legislature, passed April 4th, 1850.

In all of which particulars the complainants except to the answer of defendant, City of Los Angeles, as impertinent and as responsive to no allegations of other matter in said complainants' amended bill of complaint, or to any issue tendered in said bill of complaint, and of this, complainants pray the judgment of the court.

JESSE D. HUNTER ET AL.,
Complainants.

McNUTT & HANNON,
STEPHENS & STEPHENS,
WARREN E. LLOYD,
Complainants' Solicitors and Counsel.

(Endorsed:) No. 1121. U. S. circuit court, southern district of California. Robert Devine, *et al.*, plaintiff-, *vs.* City of Los Angeles, defendant. Exceptions to answer for impertinence. Received copy of the within exceptions, under objection that court has no jurisdiction, this 3rd day of Jan'y 1905. J. R. Scott, H. T. Lee, W. B. Mathews, attorney- for def't. Filed Jan. 3 1905 Wm. M. Van Dyke, clerk. McNutt & Hannon, Stephens & Stephens, Warren E. Lloyd, attorneys for complainants, Bullard building, 156 North Spring St., Los Angeles, Cal.

166 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California, Southern Division, Session 1905.

ROBERT DEVINE ET AL., Complainants, *vs.* THE CITY OF LOS ANGELES, Defendant. } In Equity. No. 1121. Exceptions to Answer for Insufficiency.

Exceptions taken by the complainants, Robert Devine, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato; William Craig, John Craig and Emily Edna Craig, by Emily Snyder, their guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegeber, Samuel Hunter,

Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown; Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; Hugh Glassell, Andrew Glassell; Philip H. Glassell by Hugh Glassell, his guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederick Mohle; Emil G.
167 Hirsch as administrator with the will annexed to the estate of Robert G. Rabe, deceased; David A. Kughen, W. B. Thorne, E. A. Marshall, Albert Glover, F. W. Van Wormer, Victor Carlson, E. J. Bodwell, H. S. Spinkle, W. F. Spinkle, Triumvirate Water Company, A. S. Robison, Marcus H. Cook, F. L. Cole, Abe Dufur, Henry Herberger, Edward A. Knapp, Colby Brown, A. W. Canfield, Gorden Bennett, Pete Purrier, L. A. Jones, Earl Anderson, W. M. Hoist, John E. Battelle, Luke Craig, H. P. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pionges, Henry C. Hayes, Mrs. W. B. Schafer, George C. Melrose, T. D. Buffington, Henry L. Comber, David B. Wyckhoff, W. M. Beeson, Amanda Huff, M. T. Miner, Hess Brewster, Hattie Brewster, Edward Ayres, Sherman A. Roberts, Marilla F. Pratt, Harrison Harvey Davenport, Dwight Griswold, Giovanni Gai, Tropico Water Company, Christ Kraft, Adelaide Tettentill, Leona E. Engelhardt, D. McNiver, K. S. Black, Joseph Edgar Moser, Charles Edward Moser, T. T. Lewis, Titus Phillips, Mary P. Pomroy, A. Lamar, Andrew Glassell, Susan Glassell Mitchel, M. J. F. Stearns, Clementine Lamer, Albert Bley, John A. Harris, Isaac G. Goode, Henry Braasch, Leonard N. Lockwood, E. R. Copeland, W. J. Wood, Mary B. Goggia, William Schomp, Cassius Edmunds, James Truman, Austin Truman, Daniel M. O'Connor; Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; A. R. Ballantyne, Henry Heide, Florence Malcolm, M. J. Dolson, Josephine Doan, Day Hix Dunning, U. S. Ludwig, Jacob H. Dingman, Charles E. Patterson, Eli Doan, David J. Miller, Ezra M. Hurst, Frank W. Grow, John E. Swain, William W. Young, Paulina Gastreich, Henry Luttge, Sr., Almon S. D. Fulton, Henry Luke Comber, John T. Comber, Sarah A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Frank A. Halberg, Edward E. Condon, John L. Johnson, William H. Thompson, Richard Eustice, Alfred L. Wright, Charlotte Richter, William N. Hall, Orville Myers, Henry Munger, Wilbur Purrier, Lydia Dufur, John R. White,
168 John T. Adamson, Martin Pupka, Albert Grover, Laura Grover, A. Richards, Evan M. Crane, Harry Nelson, William

Britton, Gustave Anderson, Annie Wright, George B. Edwards, Minnie Lindgrem, Edward Shively, J. M. Shively, Lena D. Buffington, Mary E. Harris, Esther Hoist, Mary C. Johnson, Martha J. Melrose, Julia E. Nicholaus, Mary N. Patterson, Jean Pinoges, William H. Thorn, R. Purrier, Charles E. Colton, Sam Gilmore, R. B. Shelton, Henry Williams, Lorenzo Pelanconi, Petra Pelanconi, Honorina P. Valla, Emil Bary, Alfred E. Hodgson, Martha A. Hodgson, Samuel W. Little, Clayton Ogier, Frank Ogier, Norman C. Bridge, H. D. Roberson, Alvira I. Clugage, David W. Dwire, Charles Forman, Jacob Goetz, A. P. Hoffman, Samuel P. Newbill, Emily Brack, Max H. Shelton, Florence A. Stough, Samuel Wilkinson, Mary A. Brown, Tina M. Thorn, Hester A. Williams, Clara Gilmore, Anna R. Goode, John C. Oestergard, Verdugo Cañon Water Company, C. E. Grotzinger, Daisy B. Grotzinger, Joseph E. Bonner, Mrs. A. M. Worthing, and John Gilmore, jointly and severally to the insufficient answer of the defendant City of Los Angeles to the complainants' amended bill of complaint:

First. For that the defendant City of Los Angeles has not to the best and utmost of its knowledge, remembrance, information and belief set forth whether the paramount title derived from Mexico and Spain, or either of them, which defendant claims to the waters of the Los Angeles river and all the waters in and under the lands of complainants, and the right to use the same as charged and alleged in complainants' amended bill of complaint, is entirely merged in the patents issued by the Government of the United States under the act of Congress of March 3, 1851, as alleged in said amended bill of complaint and is defined by the terms thereof, but insufficiently and evasively answers the same by alleging matters and things wholly insufficient as answers thereto, and does not show whether defendant's title derived from Mexico or Spain is ascertainable from said patents properly construed, but sets up matters pertaining in great part to subsequent changes affecting title, as appears by the portions of defendant's answer here set out, namely:

169 "This defendant admits that it claims the paramount right to the waters of said Los Angeles river by virtue of grants, laws, usages and customs of the Republic of Mexico and the Kingdom of Spain, and the act of the legislature, passed, April 4th, 1850, mentioned in paragraph XVIII*a* of said amended bill of complaint; but this defendant denies that said sources of title are the only ones through which it claims such title; but, on the contrary, this defendant alleges that it also claims said paramount right by virtue of long and continued use and possession of said river and the waters thereof for a period of more than 120 years, and by various grants and conveyances from private individuals, and by virtue of various judgments and decrees of courts of competent jurisdiction, and by virtue of the patents to the mayor and common council of the city of Los Angeles, hereinbefore referred to, and also by virtue of its ownership of various tracts of land belonging to this defendant which are riparian to said river, amounting in area to more

than 4000 acres of land, and embracing the land through which said river flows in passing through the lands included in said last mentioned patent." (Answer page 14 lines 19–32, and page 15 lines 1–6.)

"That, as this defendant is informed and believes, all of the complainants named in this paragraph of this answer, and all of their predecessors in interest by title acquired since the commencement of said two actions, had full notice and knowledge of the rendition and entry of both of said judgments, so rendered and entered on the 4th day of August, 1881, as aforesaid." (Answer page 76 lines 6–12.) (Also paragraph "30" of defendant's answer being pages 52 to 76, inclusive, thereof.)

Second. For that defendant hath not in manner aforesaid answered and set forth by what authority said defendant or its attorney or solicitors attempt to disclaim or deny the force and effect of certain statutes of the State of California charged and alleged in said amended bill of complaint and admitted in said answer
170 to have been duly passed and adopted, but insufficiently evasively and inconsistently alleges that said statutes are of effect and virtue in dissolving the ancient pueblo of Los Angeles and in conferring upon and vesting in defendant the property rights of such pueblo and in vesting in defendant "such rights with respect to said river as might have been vested in the State of California upon its admission to the Union." (Answer page 26 lines 21–23.) And evasively and insufficiently denies that the acts, charters, and proceedings mentioned in the amended bill cloud complainants' titles or affect their vested rights. (Paragraph 22 of answer beginning page 24.)

Third. For that all disclaimers of said defendant set forth in its said answer are insufficient and evasive and not consistent with the further and other allegations, denials and admissions of said defendant's said answer.

In all which particulars the said complainants and each of them except to the answer of defendant City of Los Angeles as evasive imperfect, inconsistent and insufficient and prays that defendant City of Los Angeles may be compelled to put in a full and sufficient answer.

McNUTT & HANNON,
STEPHENS & STEPHENS,
WARREN E. LLOYD,
Solicitors for said Complainants.

(Endorsed:) In equity. No. 1121. In the circuit court of the United States, for the southern district of California, southern division. Robert Devine, *et al.*, complainants, *vs.* The City of Los Angeles defendant. Exceptions to the answer of defendant for insufficiency. Received copy of the within exceptions, under objection that court
has no jurisdiction, this 3rd day of Jan'y, 1905. H. T. Lee
171 J. R. Scott, W. B. Mathews, attorneys for def't. Filed Jan. 3 1905 Wm. M. Van Dyke, clerk. McNutt & Hannon, Stephens

& Stephens, Warren E. Lloyd, rooms 340–341 Bradbury building, Los Angeles, Cal. solicitors for complainants.

172 At a stated term, to wit, the January term, A. D. 1905, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court-room in the city of Los Angeles, on Monday the twenty-third day of January, in the year of our Lord one thousand nine hundred and five.

Present: The Honorable Olin Wellborn, district judge.

ROBERT DEVINE ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES, Defendant. } No. 1121.

C. F. McNutt, Esq., A. M. Stephens, Esq., and Warren E. Lloyd, Esq., being present as counsel for complainant, and J. R. Scott, Esq., being present as counsel for defendant, and the written stipulation and agreement of the parties to this cause by their solicitors of record having been filed herein providing that the following amendments be inserted by the clerk in the original amended bill of complaint as of date of the hearing of the motion of defendant to dismiss said bill, viz:

Page 1 line 10 after "your orators" insert the name of "Robert Devine."

Page 4 line 23 after "to avoid a multiplicity of suits" insert "and to determine a common adverse claim."

Page 38 line 21 change the name Ignacio to the feminine form Ignacia.

Page 39 line 1 change he to she.
" " " 7 " Ignacio to Ignacia and his to her.
" " " 11 " his to her.

173 Page 41 lines 26 and 27 change name of pueblo from Pueblo de la Nuestra Senora Reina de los Angeles to Nuestra Senora Reina de los Angeles.

Page 43 line 26 after "based" insert "to the Los Angeles river, or"—

Page 43 line 28 after word "waters," insert "or the said river."

Page 44 line 16 after the word "river" insert "and the river itself."

Page 44*a* line 20 after the word "river" insert "or in and to the Los Angeles river itself."

Page 44*a* line 25 after the word "river" insert "or the river itself."

Page 45 line 28 after the word "river" at end of line insert "or to said river itself."

Page 46 line 7 after the word "owner" insert "of the Los Angeles river and"—

Page 47 line 22 strike out the word "later."

Page 47 line 24 after the word "river" insert "and in respect of the river itself."

Page 58 line 5 after the words "set forth" insert "and the said several acts of said legislature of California, and the said charters of defendant, purporting to confer upon said defendant the title of said river and its waters, and declaring and asserting that such title to said river and its waters is vested in said defendant as successor to the Mexican pueblo."

Page 58 line 6 insert "have" in lieu of "has."

" 58 " 5 after "have" insert "and do."

Now, on motion of C. F. McNutt, Esq., of counsel for complainants, it is accordingly ordered that said amendments be and they are thereupon by the clerk inserted in the original amended bill of complaint and attested by his initials.

174 (Endorsed:) No. 1121. U. S. circuit court, ninth circuit, southern district of California, southern division. Robert Devine *et al.*, *vs.* The City of Los Angeles. Copy order directing clerk to insert amendments in amended bill of complaint. Filed Jan. 23 1905 Wm. M. Van Dyke, clerk.

175 At a stated term, to wit, the January term, A. D. 1905, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court room in the city of Los Angeles, on Monday the twenty-third day of January, in the year of our Lord one thousand nine hundred and five.

Present: The Honorable Olin Wellborn, district judge.

ROBERT DEVINE ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES, Defendant. } No. 1121.

By consent of counsel for both parties this cause now coming on, pursuant to continuance, for further hearing, and for decision on defendant's motion to dismiss said cause on the ground that it appears from the amended bill of complaint and the answer of the defendant that said court has no jurisdiction of said cause, C. F. McNutt, Esq., A. M. Stephens, Esq., and Warren E. Lloyd, Esq., appearing as counsel for complainants, and J. R. Scott, Esq., appearing as counsel for defendant, and said motion to dismiss said cause having now been submitted to the court for its consideration and decision, it is by the court ordered that said motion be, and the same hereby is granted, to which ruling of the court complainants by their said counsel note and are allowed an exception which is hereby entered herein; thereupon, a decree that the amended bill of complaint of complainants herein be, and the same hereby is dismissed for want of jurisdiction and that said dismissal be without

prejudice to the right of complainants, or any of them, to bring a new bill of complaint in any court having jurisdiction
176 thereof, is signed and filed herein in open court and directed to be entered herein.

177 In the Circuit Court of the United States for the Ninth Circuit within and for the Southern District of California.

ROBERT DEVINE and Others, Complainants, *vs.* THE CITY OF LOS ANGELES, Defendant. } In Equity. No. 1121. Decree.

This cause came on to be heard at the July term, A. D. 1904, on the 3rd day of January, 1905, on the motion of the defendant to dismiss the amended bill of complaint of the complainants, on the ground that it appeared from the said amended bill of complaint and the answer of the defendant that this court had no jurisdiction of said cause, and that said suit did not really and substantially involve a dispute or controversy properly within the jurisdiction of this court, Mr. W. B. Mathews and Mr. J. R. Scott appearing for the defendant, and Mr. Cyrus F. McNutt, Mr. A. M. Stephens, and Mr. Warren E. Lloyd appearing for the complainants, and, the cause having been submitted to the court for decision, after argument thereafter had, the court, on this 23rd day of January, 1905, ordered a decree dismissing the said amended bill of complaint on the ground specified in said motion.

It is, therefore, by the court ordered, adjudged and decreed that the amended bill of complaint of complainants herein be, and the same hereby is, dismissed for want of jurisdiction.

And it is further ordered that said dismissal be without prejudice to the right of complainants, or any of them, to bring a new bill of complaint in any court having jurisdiction thereof.

Thus done in open court the 23rd day of January, A. D. 1905.

OLIN WELLBORN, Judge.

Decree entered and recorded January 23rd, 1905.

WM. M. VAN DYKE, Clerk.

178 Costs taxed in favor of defendant in sum of $30.00 January 30th, 1905.

WM. M. VAN DYKE, Clerk.

(Endorsed:) No. 1121. U. S. circuit court, 9th judicial circuit, so. dist. of California, southern division. Robert Devine, *et al.*, complainants, *vs.* The City of Los Angeles, defendant. Decree. Filed Jan. 23 1905 Wm. M. Van Dyke, clerk. W. B. Mathews, Lee & Scott, office address, room 709 Trust building, 129 West Second St., Los Angeles, California, attorneys for d'f't.

179 In the Circuit Court of the United States for the Southern District of California.

ROBERT DEVINE ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES, Defendant.
} In Equity. No. 1121.

Petition for Appeal.

The complainants in the above entitled cause, namely, Robert Devine, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato; Willlam Craig, John Craig and Emily Edna Craig, by Emily Snyder, their guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegeber Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown; Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; Hugh Glassell, Andrew Glassell; Philip H. Glassell by Hugh Glassell, his guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederick Mohle; Emil G. Hirsch as administrator with the will annexed of the estate of Robert G. Rabe, deceased; David A. Kughen, W. B. Thorne, E. A. Marshall
180 Albert Grover, F. W. Van Wormer, Victor Carlson, E. J. Bodwell, H. S. Spinkle, W. F. Spinkle, Triumvirate Water Company, A. S. Robison, Marcus H. Cook, F. L. Cole, Abe Dufur, Henry Herberger, Edward A. Knapp, Colby Brown, A. W. Canfield, Gorden Bennett, Pete Purrier, L. A. Jones, Earl Anderson, W. M. Hoist, John E. Battelle, Luke Craig, H. P. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pinoges, Henry C. Hayes, Clara Hayes, Mrs. W. B. Schafer, George C. Melrose, T. D. Buffington, Henry L. Comber, David B. Wyckhoff, W. M. Beeson, Amanda Huff, M. T. Miner, Hess Brewster, Hattie Brewster, Edward Ayres, Sherman A. Roberts, Marilla F. Pratt, Harrison Harvey Davenport, Dwight Griswold, Giovanni Gai, Tropico Water Company, Christ Kraft, Adelaide Tettentill, Leona E. Engelhardt, D. McNiver, K. S. Black, Joseph Edgar Moser, Charles Edward Moser, T. T. Lewis, Titus Phillips, Mary P. Pomroy, A. Lamer, M. J. F. Stearns, Clementine Lamer, Albert Bley, John A. Harris, Isaac G. Goode, Henry Braasch, Leonard N. Lockwood, E.

R. Copeland, W. J. Wood, Mary B. Goggia, William Schomp, Cassius Edmunds, James Truman, Austin Truman, Daniel M. O'Connor, A. R. Ballantyne, Henry Heide, Florence Malcom, M. J. Dolson, Josephine Doan, Day Hix Dunning, U. S. Ludwig, Jacob H. Dingman, Charles E. Patterson, Eli Doan, David J. Miller, Ezra M. Hurst, Frank W. Grow, John E. Swain, William W. Young, Paulina Gastreich, Henry Luttge, Sr., Almon S. D. Fulton, Henry Luke Comber, John T. Comber, Sarah A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Frank A. Halberg, Edward E. Condon, John L. Johnson, William H. Thompson, Richard Eustice, Alfred L. Wright, Charlotte Richter, William N. Hall, Orville Myers, Henry Munger, Wilbur Purrier, Lydia Dufur, John R. White, John T. Adamson, Martin Pupka, Albert Grover, Laura Grover, A. Richards, Evan M. Crane, Henry Nelson, William Britton, Gustave Anderson, Annie Wright, George B. Edwards, Minnie Lindgrem, Edward Shively, J. M. Shively, Lena D. Buffington, Mary E. Harris, Esther Hoist, Mary C. Johnson, Martha J. Melrose, Julia E. Nicholaus,
181 Mary N. Patterson, Jean Pinoges, William H. Thorn, R. Furrier, Charles E. Colton, Sam Gilmore, R. B. Shelton, Henry Williams, Lorenzo Pelanconi, Petra Pelanconi, Honorina P. Valla, Emil Bary, Alfred E. Hodgson, Martha A. Hodgson, Samuel W. Little, Clayton Ogier, Frank Ogier, Norman C. Bridge, H. D. Robertson, Alvira I. Clugage, David W. Dwire, Charles Forman, Jacob Goetz, A. P. Hoffman, Samuel P. Newbill, Emily Brack, Max H. Shelton, Florence A. Stough, Samuel Wilkinson, Mary A. Brown, Nina M. Thorn, Hester A. Williams, Clara Gilmore, Anna R. Goode, John C. Oestergard, Verdugo Cañon Water Company, C. E. Grotzinger, Daisy B. Grotzinger, Joseph E. Bonner, Mrs. A. M. Worthing, and John Gilmore, conceiving themselves aggrieved by the order and decree passed and entered on the 23rd day of January, 1905, in the above entitled suit, do hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the "assignment of errors" which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the records, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, January 23rd, 1905.

McNUTT & HANNON,
STEPHENS & STEPHENS,
WARREN E. LLOYD,
Solicitors for Complainants and Appellants.

And now, to wit, on the 23rd day of January, 1905, it is ordered that the appeal be allowed as prayed for.

Dated January 23rd, 1905.

OLIN WELLBORN, Judge.

182 I hereby certify, that the jurisdiction of this court was in issue in this case, and that the decision therein was made and rendered solely upon that question, and the question of such jurisdiction alone is certified to the supreme court for decision.

Dated, January 23rd, 1905.

OLIN WELLBORN, Judge.

(Endorsed:) In equity. No. 1121. In the circuit court of the United States, for the southern district of California, southern division. Robert Devine, *et al.*, complainants, *vs.* The City of Los Angeles, defendant. Petition for appeal. Filed Jan. 23 1905 Wm. M. Van Dyke, clerk. McNutt & Hannon, Stephens & Stephens, Warren E. Lloyd, solicitors for complainants.

183 In the Circuit Court of the United States for the Southern District of California.

ROBERT DEVINE ET AL., Complainants and Appellants, *vs.* THE CITY OF LOS ANGELES, Defendant and Appellee.	}	In Equity. No. 1121.

Assignment of Errors.

And now, on the 23rd day of January, 1905, come the complainants in the above entitled suit, namely, Robert Devine, Jesse D. Hunter, Asa Hunter, Leonard C. Clarke, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato; William Craig, John Craig and Emily Edna Craig, by Emily Snyder, their guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown; Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; Hugh Glassell, Andrew Glassell; Philip H. Glassell by Hugh Glassell, his guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverly, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederick Mohle; Emil G. Hirsch as
184 administrator with the will annexed of the estate of Robert G. Rabe, deceased; David A. Kughen, W. B. Thorne, E. A. Mar-

shall, Albert Grover, F. W. Van Wormer, Victor Carlson, E. J. Bodwell, H. S. Spinkle, W. F. Spinkle, Triumvirate Water Company, A. S. Robison, Marcus H. Cook, F. L. Cole, Abe Dufur, Henry Herberger, Edward A. Knapp, Colby Brown, A. W. Canfield, Gorden Bennett, Pete Purrier, L. A. Jones, Earl Anderson, W. M. Hoist, John E. Battelle, Luke Craig, H. P. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pinoges, Henry C. Hayes, Clara Hayes, Mrs. W. B. Schafer, George C. Melrose, T. D. Buffington, Henry L. Comber, David B. Wyckhoff, W. M. Beeson, Amanda Huff, M. T. Miner, Hess Brewster, Hattie Brewster, Edward Ayres, Sherman A. Roberts, Marilla F. Pratt, Harrison Harvey Davenport, Dwight Griswold, Giovanni Gai, Tropico Water Company, Christ Kraft, Adelaide Tettentill, Leona E. Engelhardt, D. McNiver, K. S. Black, Joseph Edgar Moser, Charles Edward Moser, T. T. Lewis, Titus Phillips, Mary P. Pomroy, A. Lamer, M. J. F. Stearns, Clementine Lamer, Albert Bley, John A. Harris, Isaac G. Goode, Henry Braasch, Leonard N. Lockwood, E. R. Copeland, W. J. Wood, Mary B. Goggia, William Schomp, Cassius Edmunds, James Truman, Austin Truman, Daniel M. O'Connor, A. R. Ballantyne, Henry Heide, Florence Malcom, M. J. Dolson, Josephine Doan, Day Hix Dunning, U. S. Ludwig, Jacob H. Dingman, Charles E. Patterson, Eli Doan, David J. Miller, Ezra M. Hurst, Frank W. Grow, John E. Swain, William W. Young, Paulina Gastreich, Henry Luttge, Sr., Almon S. D. Fulton, Henry Luke Comber, John T. Comber, Sarah A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Frank A. Halberg, Edward E. Condon, John L. Johnson, William H. Thompson, Richard Eustice, Alfred L. Wright, Charlotte Richter, William N. Hall, Orville Meyers, Henry Munger, Wilbur Purrier, Lydia Dufur, John R. White, John T. Adamson, Martin Pupka, Albert Grover, Laura Grover, A. Richards, Evan M. Crane, Harry Nelson, William Britton, Gustave Anderson, Annie Wright, George B. Edwards, Minnie Lind-
185 grem, Edward Shively, J. M. Shively, Lena D. Buffington, Mary E. Harris, Esther Hoist, Mary C. Johnson, Martha J. Melrose, Julia E. Nicholaus, Mary N. Patterson, Jean Pinoges, William H. Thorn, R. Furrier, Charles E. Colton, Sam Gilmore, R. B. Shelton, Henry Williams, Lorenzo Pelanconi, Petra Pelanconi, Honorina P. Valla, Emil Bary, Alfred E. Hodgson, Martha A. Hodgson, Samuel W. Little, Clayton Ogier, Frank Ogier, Norman C. Bridge, H. D. Roberson, Alvira I. Clugage, David W. Dwire, Charles Forman, Jacob Goetz, A. P. Hoffman, Samuel P. Newbill, Emily Brack, Max H. Shelton, Florence A. Stough, Samuel Wilkinson, Mary A. Brown, Nina M. Thorn, Hester A. Williams, Clara Gilmore, Anna R. Goode, John C. Oestergard, Verdugo Cañon Water Company, C. E. Grotzinger, Daisy B. Grotzinger, Joseph E. Bonner, Mrs. A. M. Worthing, and John Gilmore, by McNutt & Hannon, Stephens & Stephens, and Warren E. Lloyd, their solicitors, and say, the decree in said plea is erroneous and against the just rights of said complainants, for the following reasons:

First. Because the court erroneously dismissed the said bill and

the said suit, on the ground, as stated by the court, that said court had no jurisdiction of said suit.

Second. Because it appeared by the bill of complainants herein, that the said court had jurisdiction of the suit and erroneously dismissed the said bill and the said suit.

Third. Because it appeared by the bill and answer in said suit, that the court had jurisdiction thereof and erroneously dismissed the said bill and suit for lack of jurisdiction.

Fourth. Because it appears by said bill, that the suit involved the construction and application of the Constitution of the United States, but, notwithstanding, the court erroneously dismissed the said bill and suit.

Fifth. Because it appears by said bill and answer, that the suit involves the construction and application of the Constitution of the United States, but, notwithstanding, the court erroneously dismissed said bill and suit, on the ground that the court had
186 no jurisdiction thereof.

Sixth. Because the court erroneously entertained defendant's motion to dismiss said bill and suit, though such motion was founded upon said bill and defendant's answer to the merits, which bill and answer show the court had jurisdiction of said suit.

Seventh. Because the court erroneously granted defendant's motion to dismiss said bill and suit, upon the ground that said court had no jurisdiction thereof, though said motion was founded upon said bill and defendant's answer to the merits, which show the court had jurisdiction of said suit.

Eighth. Because it appears by said bill, that the construction and application of the treaty of Guadalupe Hidalgo were involved, but the court, notwithstanding, erroneously dismissed the said bill and suit for want of jurisdiction.

Ninth. Because it appears by the bill, that the construction and application of the act of Congress of the United States, approved March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," were involved, but the court, notwithstanding, erroneously dismissed said bill and suit, on the ground that said court had no jurisdiction thereof.

Tenth. Because it appears by the bill and answer, that the construction and application of the said act of the Congress of the United States, approved March 3, 1851, were involved, and that there was, and is, a controversy between the complainants and defendant as to such construction and application of said act, but the court, notwithstanding, erroneously dismissed said bill and suit, on the ground that said court had no jurisdiction thereof.

Eleventh. Because it is made to appear by complainants' said bill, that the defendant, The City of Los Angeles, has, under color of certain statutes of the legislature of the State of California, and of certain charters of the defendant city, approved by the said legislature, which acts and charters are set forth in said bill,

187 subjected, and caused to be subjected the complainants in said bill to deprivations of their several property rights, privileges and immunities, secured to them by the Constitution and laws of the United States, and in violation and disregard especially of § 1979, title XXIV of the Revised Statutes of the United States; but, nevertheless, the court erroneously dismissed said bill and suit, on the ground that said court had no jurisdiction thereof.

Twelfth. Because it appears in said bill that certain of the laws of the legislature of the State of California were claimed and alleged by complainants to have had the effect to cast clouds upon the several titles of complainants and thereby to destroy the values of their property, and that such laws were in contravention of the Constitution of the United States; but, nevertheless, the court erroneously dismissed said bill and suit, on the ground that said court did not have jurisdiction thereof.

Thirteenth. Because the court erroneously decided that defendant's answer contained a sufficient disclaimer of title under the statutes of California, and the charters of defendant, set forth in the bill, to oust the jurisdiction of the court in said suit.

Fourteenth. Because the court erroneously dismissed the bill and suit, although it appeared by said bill that Federal questions were involved.

Wherefore, the said complainants pray that said decree be reversed, and that said court be directed to set aside the decree dismissing their bill herein, and to render a decree in favor of complainants, in accordance with the prayer of their said bill.

McNUTT & HANNON,
STEPHENS & STEPHENS,
WARREN E. LLOYD,
Solicitors for Complainants and Appellants.

188 (Endorsed:) In equity. No. 1121. In the circuit court of the United States, for the southern district of California, southern division. Robert Devine, *et al.*, complainants and appellants, *vs.* The City of Los Angeles, defendant and appellee. Assignment of errors. Filed Jan. 23, 1905. Wm. M. Van Dyke, clerk. McNutt & Hannon, Stephens & Stephens, Warren E. Lloyd, solicitors for complainants and appellants.

189 At a stated term, to wit, the January term, A. D. 1905, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court room in the city of Los Angeles, on Monday the twenty-third day of January, in the year of our Lord one thousand nine hundred and five.

Present: The Honorable Olin Wellborn, district judge.

ROBERT DEVINE ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES, Defendant. } No. 1121.

C. F. McNutt, Esq., A. M. Stephens, Esq., and Warren E. Lloyd, Esq., being present as counsel for complainants, and J. R. Scott, Esq., being present as counsel for defendant, the petition of the complainants for an order allowing an appeal in said cause to the Supreme Court of the United States from the order and decree entered in said cause on the 23rd day of January, 1905, together with said complainants' assignment of errors are filed in open court, and thereupon on motion of C. F. McNutt, Esq., of counsel as aforesaid for complainants, it is ordered that said appeal be, and the same hereby is allowed from the order and decree passed and entered on the 23rd day of January, 1905, in the above entitled suit to the Supreme Court of the United States and that a transcript of the record, proceedings and papers upon which said order and decree were made, duly authenticated, be sent to the Supreme Court of the United States; it is further ordered that the bond to be given by complainants on said appeal be, and the same hereby is fixed at $300.

190 ROBERT DEVINE ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES, Defendant. } No. 1121. Bond.

Know all men by these presents, That we, Hugh Glassell and Andrew Glassell, both of the city of Los Angeles, county of Los Angeles, State of California, are held and firmly bound unto the above named City of Los Angeles, in the sum of three hundred dollars ($300), to be paid to the said City of Los Angeles; for the payment of which, well and truly to be made, we bind ourselves and each of us, our, and each of our, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seal and dated the 24th day of January, in the year of our Lord one thousand nine hundred and five.

Whereas, Robert Devine, Jesse D. Hunter, Asa Hunter, Leonard C. Clark, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato, William Craig, John Craig and Emily Edna Craig, by Emily Snyder, their guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegeber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown, Hugh Glassell and Andrew Glassell as executors of the last will and testament of Andrew Glassell, deceased; Hugh Glassell, Andrew Glassell; Philip H. Glassell, by Hugh Glassell, his guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey,

Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John
191 B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederick Mohle; Emil G. Hirsch as administrator with the will annexed of the estate of Robert G. Rabe, deceased; David A. Kughen, W. B. Thorne, E. A. Marshall, Albert Grover, F. W. Van Wormer, Victor Carlson, E. J. Bodwell, H. S. Spinkle, W. F. Spinkle, Triumvirate Water Company, A. S. Robison, Marcus H. Cook, F. L. Cole, Abe Dufur, Henry Herberger, Edward A. Knapp, Colby Brown, A. W. Canfield, Gorden Bennett, Peter Purrier, L. A. Jones, Earl Anderson, W. M. Hoist, John E. Battelle, Luke Craig, H. P. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pinoges, Henry C. Hayes, Clara Hayes, Mrs. W. B. Schafer, George C. Melrose, T. D. Buffington, Henry L. Comber, David B. Wyckhoff, W. M. Beeson, Amanda Huff, M. T. Miner, Hess Brewster, Hattie Brewster, Edward Ayres, Sherman A. Roberts, Marilla F. Pratt, Harrison Harvey Davenport, Dwight Griswold, Giovanni Gai, Tropico Water Company, Christ Kraft, Adelaide Tettentill, Leona E. Engelhardt, D. McNiver, K. S. Black, Joseph Edgar Moser, Charles Edward Moser, T. T. Lewis, Titus Phillips, Mary P. Pomroy, A. Lamer, M. J. F. Stearns, Clementine Lamer, Albert Bley, John A. Harris, Isaac G. Goode, Henry Braasch, Leonard N. Lockwood, E. R. Copeland, W. J. Wood, Mary B. Goggia, William Schomp, Cassius Edmunds, James Truman, Austin Truman, Daniel M. O'Connor, A. R. Ballantyne, Henry Heide, Florence Malcom, M. J. Dolson, Josephine Doan, Day Hix Dunning, U. S. Ludwig, Jacob H. Dingman, Charles E. Patterson, Eli Doan, David J. Miller, Ezra M. Hurst, Frank W. Grow, John E. Swain, William W. Young, Paulina Gastreich, Henry Luttge, Sr., Almon S. D. Fulton, Henry Luke Comber, John T. Comber, Sarah A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Frank A. Halberg, Edward E. Condon, John L. Johnson, William H. Thompson, Richard Eustice, Alfred L. Wright, Charlotte Richter, William N. Hall, Orville Myers, Henry Munger, Wilbur
192 Purrier, Lydia Dufur, John R. White, John T. Adamson, Martin Pupka, Albert Grover, Laura Grover, A. Richards, Evan M. Crane, Harry Nelson, William Britton, Gustave Anderson, Annie Wright, George B. Edwards, Minnie Lindgrem, Edward Shively, J. M. Shively, Lena D. Buffington, Mary E. Harris, Esther Hoist, Mary C. Johnson, Martha J. Melrose, Julia E. Nicholaus, Mary N. Patterson, Jean Pinoges, William H. Thorn, R. Furrier, Charles E. Colton, Sam Gilmore, R. B. Shelton, Henry Williams, Lorenzo Pelanconi, Petra Pelanconi, Honorina P. Valla, Emil Bary, Alfred E. Hodgson, Martha A. Hodgson, Samuel W. Little, Clayton Ogier, Frank Ogier, Norman C. Bridge, H. D. Roberson, Alvira I. Clugage, David W.

Dwire, Charles Forman, Jacob Goetz, A. P. Hoffman, Samuel P. Newbill, Emily Brack, Max H. Shelton, Florence A. Stough, Samuel Wilkinson, Mary A. Brown, Nina M. Thorn, Hester A. Williams, Clara Gilmore, Anna R. Goode, John C. Oestergard, Verdugo Cañon Water Company, C. E. Grotzinger, Daisy B. Grotzinger, Joseph E. Bonner, Mrs. A. M. Worthing, and John Gilmore have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the judge of the circuit court of the United States, for the southern district of California:

Now, therefore, the condition of this obligation is such that if the above named complainants and appellants shall prosecute said appeal to effect and answer and pay all costs, if they fail to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HUGH GLASSELL.
ANDREW GLASSELL.

STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

Hugh Glassell and Andrew Glassell, being first duly sworn each for himself says: That he is a citizen and resident of the county of Los Angeles, State of California, and a freeholder therein
193 that he is worth more than double the amount mentioned in the foregoing bond, in property in the State of California, over and above all his just debts and liabilities and exclusive of property exempt by law.

HUGH GLASSELL.
ANDREW GLASSELL.

Subscribed and sworn to before me, this 24th day of January, 1905.

[SEAL.]

J. E. HANNON,
Notary Public in and for the County of
Los Angeles, State of California.

The foregoing bond and sureties thereon are hereby approved this 28th day of January, 1905.

OLIN WELLBORN, Judge.

(Endorsed:) No. 1121. In the circuit court of the United States, ninth circuit, southern district of California. Robert Devine, *et al.*, *vs.* City of Los Angeles. Bond on appeal. Filed Jan. 28, 1905. Wm. M. Van Dyke, clerk. McNutt & Hannon, Stephens & Stephens, Warren E. Lloyd, attorneys & solicitors for complainants and appellants.

194 In the Circuit Court of the United States for the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division.

No. 1121.

ROBERT DEVINE, JESSE D. HUNTER, ASA HUNTER, LEONARD C. Clark, Edward Partridge, Teresa Ortiz, Miguel Ortiz, Anastacio Felis, Concepcion Felis, John S. Pollock, William A. Foster, Peter Cartato, William Craig, John Craig, and Emily Edna Craig, by Emily Snyder, Their Guardian; Joseph Hunter, Louis Salzegeber, Annie Salzegeber, Samuel Hunter, Amanda J. McWhorter, T. L. McWhorter, W. W. McWhorter, B. F. McWhorter, Minnie Glassell Brown, Hugh Glassell, and Andrew Glassell, as Executors of the Last Will and Testament of Andrew Glassell, Deceased; Hugh Glassell, Andrew Glassell, Philip H. Glassell, by Hugh Glassell, His Guardian; William T. Glassell, Susan Glassell Mitchell, Louise Glassell Shorb, Alfred Leigh Glassell, W. C. B. Richardson, Pacific Art Tile Company, C. C. Chandler, Randolph H. Stracey, Thomas Henry Harrison, Minnie H. Harrison, Hettie Pease, Helen Newton, Jennie Brown, Adelaide H. Imler, James D. Watson, Leonora Adams Peverley, Otis Peverley, George Bogart, Charles W. Ingmire, George W. Ingmire, Pio Sepulveda, Isabel Ramirez de Tononi, W. J. Boston, T. J. Moore, John B. Radcliffe, Euphemia West, Henry C. Decker, Gertrude E. Decker, Lizzie Fluhr, Christian Fluhr, Henry Nicholaus, Frederich Mohle, Emil G.
195 Hirsch, as Administrator with the Will Annexed of the Estate of Robert G. Rabe, Deceased; David A. Kughen, W. B. Thorne, E. A. Marshall, Albert Grover, F. W. Van Wormer, Victor Carlson, E. J. Bodwell, H. S. Spinkle, W. F. Spinkle, Triumvirate Water Company, A. S. Robison, Marcus H. Cook, F. L. Cole, Abe Dufur, Henry Herberger, Edward A. Knapp, Colby Brown, A. W. Canfield, Gorden Bennett, Pete Purrier, L. A. Jones, Earl Anderson, W. M. Hoist, John E. Battelle, Luke Craig, H. P. Johnson, Simon Fairburn, W. B. Sarrar, J. Mortensen, Joseph Hogan, J. D. Smith, Rosalie Pinoges, Henry C. Hayes, Clara Hayes, Mrs. W. B. Schafer, George C. Melrose, T. D. Buffington, Henry L. Comber, David B. Wickoff, W. M. Beeson, Amanda Huff, M. T. Miner, Hess Brewster, Hattie Brewster, Edward Ayers, Sherman A. Roberts, Marilla F. Pratt, Harrison Harvey Davenport, Dwight Griswold, Giovanni Gai, Tropico Water Company, Christ Kraft, Adelaide Tetentill, Leona E. Engelhardt, D. McNiver, K. S. Black, Joseph Edgar Moser, Charles Edward Moser, T. T. Lewis, Titus Phillips, Mary P. Pomroy, A. Lamer, Andrew Glassell, Susan Glassell Mitchell, M. J. F. Stearns, Clementine Lamer, Albert Bley, John A. Harris, Isaac G. Goode, Henry Braasch, Leonard N. Lockwood, E. R. Copeland, W. J. Wood, Mary B. Goggia, William Schomp, Cassius Edmunds, James Truman, Austin Truman, Daniel

M. O'Connor, Hugh Glassell, and Andrew Glassell, as Executors of the Last Will and Testament of Andrew Glassell, Deceased;
196 A. R. Ballantyne, Henry Heide, Florence Malcom, M. J. Dolson, Josephine Doan, Day Hix Dunning, U. S. Ludwig, Jacob H. Dingman, Charles E. Patterson, Eli Doan, David J. Miller, Ezra M. Hurst, Frank W. Grow, John E Swain, William W. Young, Paulina Gastreich, Henry Luttge, Sr., Almon S. D. Fulton, Henry Luke Comber, John T. Comber, Sarah A. Lane, Ellen R. Hall, Henry H. Hall, William H. Ginn, John Sparks, Frank A. Halberg, Edward E. Condon, John L. Johnson, William H. Thompson, Richard Eustice, Alfred L. Wright, Charlotte Richter, William N. Hall, Orville Meyers, Henry Munger, Wilbur Purrier, Lydia Dufur, John R. White, John T. Adamson, Martin Pupka, Albert Grover, Laura Grover, A. Richards, Evan M. Crane, Harry Nelson, William Britton, Gustave Anderson, Annie Wright, George B. Edwards, Minnie Lindgrem, Edward Shively, J. M. Shively, Lena D. Buffington, Mary E. Harris, Esther Hoist, Mary C. Johnson, Martha J. Melrose, Julia E. Nicholaus, Mary N. Patterson, Jean Pinoges, William H. Thorn, R. Furrier, Charles E. Colton, Sam Gilmore, R. B. Shelton, Henry Williams, Lorenzo Pelanconi, Petra Pelanconi, Honorina P. Valla, Emil Bary, Alfred E. Hodgson, Martha A. Hodgson, Samuel W. Little, Clayton Ogier, Frank Ogier, Norman C. Bridge, H. D. Roberson, Alvira I. Clugage, David W. Dwire, Charles Forman, Jacob Goetz, A. P. Hoffman, Samuel P. Newbill, Emily Brack, Max H. Shelton, Florence A. Stough, Samuel Wilkinson, Mary A. Brown, Nina M. Thorn, Hester
197 A. Williams, Clara Gilmore, Anna R. Goode, John C. Oestergard, Verdugo Cañon Water Company, C. E. Grotzinger, Daisy B. Grotzinger, Joseph E. Bonner, Mrs. A. M. Worthing and John Gilmore, Complainants,

vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing one hundred and ninety-three (193) type-written pages, numbered from 1 to 193 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the record and pleadings and of all proceedings and papers upon which the order and decree entered on the 23rd day of January, 1905, were made, and also of the assignment of errors, petition for and order allowing appeal, and bond on appeal in the above and therein entitled cause, and that the same together constitute the transcript of the record on appeal to the Supreme Court of the United States, in said cause.

I do further certify that the cost of the foregoing record is $131.40 the amount whereof has been paid me by the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California this 20th day of February, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States the one hundred and twenty-ninth.

[Seal U. S. Circuit Court, Southern Dist. Cal., 1886.]

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

Endorsed on cover: File No. 19,673. S. California C. C. U. S. Term No. 573. Robert Devine, Jesse D. Hunter, Asa Hunter, *et al.*, appellants, *vs.* The City of Los Angeles. Filed March 20th, 1905. File No. 19,673.

APPELLANTS' BRIEF

FILE COPY

SUPREME COURT

OF THE

UNITED STATES

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1905.

ROBERT DEVINE, JESSE D. HUNTER, ASA HUNTER et al.,
Appellants,

vs.

3 THE CITY OF LOS ANGELES,
Appellee.

Appeal from the Circuit Court of the United States, for the Southern District of California.

ABSTRACT OF THE RECORD.

4 This is a suit in equity, the purpose of which is to remove clouds alleged to have been cast upon the several titles of complainants, by the defendant, The City of Los Angeles, and to quiet the title of said complainants as against certain claims set up and asserted by the defendant, which claims constitute clouds upon complainant's titles.

5 The material averments of the bill are:

(1). That all the parties plaintiff and the defendant are residents and citizens of the County of Los Angeles and of the State of California. (Bill, par. I, Tr., p. 8.)

(2). That while the complainants are owners in severalty of certain lands in the bill described,
6 lying in the said County, State and District, their cause and grounds of complaint against the defendant, The City of Los Angeles, are common to all of them, and the claim and asserted title of the defendant, in respect of which the suit is brought, are common against the complainants, and the wrongful acts complained of by them as having been done and threatened by the defend-
7 ant, affect the rights and interests of the complainants in common.

Wherefore, and to avoid a multiplicity of suits, and to determine a common adverse claim, and to remove a common cloud upon title, the complainants have joined, and do join, in a common bill for relief. (Bill ,par. II, Tr., p. 8.)

8 (3). Then follow the descriptions of the lands owned by the several complainants. (Bill, pars. III to VI inclusive, Tr., pp. 8 to 24 inclusive.)

(4). The lands of complainants lie in three different Ranchos, comprised within three several grants as follows:

9 (a). Rancho San Rafael, granted by the Government of the Kingdom of Spain, on the 20th day of October, 1784, to Jose Maria Berdugo, a subject of said Kingdom, and further confirmed to said grantee on the 12th day of February, 1789; that said Berdugo, his heirs and successors, continued in the possession of said Rancho, un-
10 der said grant, down to the time of the cession of the territory now constituting the State of California, to the Government of the United States, and were in such possession and occupancy at the date of the Treaty of Peace and Friendship of Guadalupe Hidalgo, and were entitled to all the rights and benefits secured to Mexicans in said ceded territory, under Articles VIII and IX of
11 said Treaty. (Bill, par. VII, Tr., p. 24.)

(b). Rancho Los Felis, granted by the Republic of Mexico, on the 22nd day of March, 1843, to Maria Ignacia Berdugo, who was, at said date, a citizen of Mexico, and continued to be, and was such citizen at the date of the Treaty of Peace aforesaid, and as such, was entitled to the rights
12 and benefits secured to such citizens by the said Treaty, and particularly by Articles VIII and IX thereof. (Bill, par. X, Tr., p. 25.)

(c). Rancho Providencia, granted by the Republic of Mexico to Vicente de la Osa, on the 23rd day of Marcn, 1843; that said grantee was a citizen of the Republic of Mexico, and continued such

13 at the date of the Treaty of Peace aforesaid, and was entitled to all the rights and benefits of said Treaty, and especially of Articles VIII and IX thereof. (Bill, par. XII, Tr., p. 26.)

(5). That after the creation of the Land Commission, under the Act of the Congress of the United States, approved March 3, 1851, entitled,
14 "AN ACT TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA," the then owners, as heirs and successors of said several grantees of said several Ranchos, from time to time presented their claims to said Commission, praying to have their rights as such grantees and successors ascertained, settled and adjudicated, and in all
15 said cases, such proceedings were had and taken upon such petitions as resulted in a judgment confirming in such petitioners respectively, the titles in and to said Ranchos respectively; which adjudications were followed by the execution of patents by the United States, under the hand of the President thereof for the time being, granting and convying to the said several confirmees,
16 titles in and to the said Ranchos respectively. (Bill, pars. VIII, IX, XI and XII, Tr., pp. 24, 25 and 26.)

(6). That the several grants of the several Ranchos, made by the Kingdom of Spain and the Republic of Mexico, respectively, did, under the

laws of Spain and of Mexico, convey and carry to the grantees respectively, title to the waters and all other things within said lands, without exception or reservation, and the citizens of Mexico and their successors in title who held and owned the land of said several Ranchos at the date of said Treaty of Guadalupe Hidalgo, held and owned such lands by fee simple title, and that in discharging the obligations taken upon it by the Government of the United States, in the Eighth and Ninth Articles of said Treaty, said Government of the United States did confirm, and cause to be confirmed, by and through the Tribunals erected and designated for that purpose, to said grantees and their heirs, successors and assigns, titles in fee simple, and the said Government of the United States, upon such several confirmations, did, through its President, execute to said confirmees, severally and respectively, grants of such lands in fee simple absolute. (Bill, par. XIII, Tr., pp. 26 and 27.)

(7). Complainants allege that they deraign their several titles in fee, as aforesaid, in the lands described as belonging to them respectively, through mesne conveyances from the said persons in whom the titles respectively of the said several Ranchos were, in manner aforesaid, confirmed, and to whom they were conveyed by the authority

of the United States, as aforesaid. (Bill, par. XIV, Tr. p. 27.)

(8). That the defendant, The City of Los Angeues, claims to be the successor in right and title to all the grants made by the Spanish and Mexican Governments, severally and respectively, to the Pueblo Nuestra Senora Reina de los Angeles.

That on the 26th day of October, 1852, the said City filed before the said Land Commission, created under the aforesaid Act of Congress of March 3, 1851, its petition and claim, wherein it set forth and recited that by virtue of an ordinance and directions made by Governor Philipe de Neve, Commandant-General of the Internal Provinces of the West, its alleged predecessor, the aforesaid Pueblo, had been founded and instituted; and further representing that defendant City claimed sixteen square leagues of land, in virute of the general laws of Spain, and particularly of an ordinance of His Majesty the King of Spain, wherein he had provided for the establishment of the Town of Pitic, in Sonora, and had ordered that the provisions relative thereto, should be followed in the foundation of any new Pueblos of the Internal Provinces of the West, of which California constituted a part; that with said petition, the petitioner set forth an alleged copy of the said royal ordinance, and thereupon asked

25 that the said sixteen square leagues might be ascertained, in a certain manner set forth.

Such petition further alleged that said lands had been granted to the Pueblo as its common lands, in pursuance of the policy and object of the Spanish Government to encourage in California the increase of cattle and horses; that as the
26 fruits of that policy, the settlers of the Pueblo had become, and were then large stock owners, and necessarily needed such common lands as had been granted them, for the pasturage of their herds.

It was further set forth in the petition that about five square leagues of said tract of land was then covered by the houses, gardens and
27 farming lots of the City, and that the remaining quantity of land claimed, was barely sufficient to affort pasturage to the horses and cattle belonging to the inhabitants, because of its sterility and the absence of water. (Bill, par. XV, Tr. p. 28).

(9.) That thereafter, on February 5, 1856, the Land Commission, assuming jurisdiction to act upon such claim, entered an order in form con-
28 firming the claim set up in said petition as to four square leagues of the lands so claimed, but denied and rejected the said claim as to the other twelve square leagues, and thereafter such proceedings were had and taken as resulted in the action of such Commission becoming final.

That later, on the 9th day of August, 1866,

29 a patent was issued by the United States, under the hand of the President Andrew Johnson, and was delivered to the said City, wherein it is recited that the claim of the City to the lands granted, was founded upon the Mexican grant to the City, made on the 25th day of August, 1844, by Manuel Micheltoreno, then Governor of the De-
30 partment of the Californias; that said patent purported to grant and convey to the City of Los Angeles, the said four square leagues, and described the same by metes and bounds, but that no reference was made in the said patent, or in any of the proceedings upon which the same was based, to the Los Angeles River, or to the waters of the Los Angeles River, either by express words, or
31 by implication, and the said patent did not convey, nor purport to convey, any of the said waters, or the said river; that said patent was thereupon duly recorded in the proper books of such patents in the General Land Office of the United States.

That later, on the 4th day of August, 1875, another patent was issued by the United States, un-
32 der the hand of the President, U. S. Grant, purporting to convey to the defendant City the same lands described as granted in said former patent of August 9, 1866, and none other; that said later instrument contained no grant of the Los Angeles River to the said City, nor did it contain any grant of any waters whatsoever. It is, therefore,

suggested, that the later instrument is ineffective for any purpose, for the reason that the authority to issue a patent had been exhausted by the execution of the one dated August 9, 1866. (Bill, pars. XVI, XVII and XVIII, Tr., pp. 28 and 29.)

(10). That the defendant City claims the paramount right to the waters of the said Los Angeles River and the river itself, by virtue of grants, laws, usages and customs of the Republic of Mexico and the Kingdom of Spain, made and in vogue prior to the cession of the territory embraced within the State of California, to the United States of America, under said Treaty of Guadalupe Hidalgo, and by virtue of certain Acts of the Legislature of California, hereinafter referred to, and especially by virtue of an Act of the Legislature of the State of California, passed April 4, 1850, in words and figures as follows:

> "The People of the State of California, represented in Senate and Assembly, do enact as follows:
>
> "Sec. 1. All that tract of land included within the limits of the Pueblo de Los Angeles, as heretofore known and acknowledged, shall henceforth be known as the City of Los Angeles, and the said City is hereby declared to be incorporated according to the provisions of the Act entitled 'An Act to provide for the Incorporation of Cities,' approved March 18, 1850. Provided, however, that if such limits include more than four square miles, the Council shall, within three months after they are elected and qualified,

fix by ordinance the limits of the City, not to include more than said quantity of land, and the boundaries so determined shall henceforth be the boundaries of the City.

"Sec. 2. The number of Councilmen shall be seven; the first election of City officers shal be held on the second Monday of May next.

"Sec. 3. The Corporation created by this Act, shall succeed to all the rights, claims, and powers of the Pueblo de Los Angeles in regard to property, and shall be subject to all the liabilities incurred, and obligations created, by the Ayuntamiento of said Pueblo."

That the defendant City never procured confirmation of, or had ascertained or settled under said Act of Congress of March 3, 1851, any rights of said Pueblo de Los Angeles, or of itself as the successor of said Pueblo, in or to the waters of the said Los Angeles River, or in and to the Los Angeles River itself, other than such as are implied without mention in the confirmation and patent of the Pueblo lands as hereinbefore set out; that said defendant City, as successor to said Pueblo, is not now the owner of any right or rights formerly owned by said Pueblo de Los Angeles, in the waters of the Los Angeles River, or the river itself, other than such as passed under said grant of land confirmed to the defendant by the said patent.

It is thereupon alleged that the Act of the Leg-

islature of the State of California, of April 4, 1850, and certain further Acts of said Legislature, and proceedings, acts and charters of said defendant City, hereafter set forth, are a cloud upon the titles of the complainants, to their said riparian lands, and grievously affect and hinder them in the use, enjoyment and sale thereof. (Bill, par. XVIIIa, Tr., pp. 29 and 30.)

(11). The course and direction of the Los Angeles River is set forth, showing that it runs in a southerly direction, through the Providencia and San Rafael Ranchos, and thence through the Los Felis Rancho, and thence partly through the City of Los Angeles; that the said Ranchos, and each of them, are riparian to the stream, and the several tracts of land of complainants are, in virtue thereof, also riparian to said **stream.**

It is alleged that underlying each and all of the several tracts of lands belonging to the several complainants, are waters at varying distances below the surface of the earth, which do not flow as a stream, but are oozing and percolating in the land, and while so oozing and percolating, do not constitute any part of the waters of the Los Angeles River; that under and by virtue of the said patents and mesne conveyances hereinbefore referred to, said waters belong to the several complainants, by reason of their several ownerships in the said lands; that the waters so exist-

45 ing in said lands are of great value to the several owners of said lands, by reason of the fact, that by pumping they can be brought to the surface of the land, and there used for the irrigation of valuable crops, which are produced upon the lands, but which without the said waters cannot be produced; that the waters so existing in said lands
46 are necessary to the complainants in the ownership, use and cultivation of their several lands, for the irrigation thereof, and are also necessary to those of the complainants who reside upon said lands for domestic uses.

It is then shown that of the complainants certain corporations and natural persons whose
47 names are set forth, have bored wells and erected pumping plants upon their several tracts of lands, and are using the water which they are pumping from their several lands, for domestic and irrigating purposes, and are thus producing valuable crops, and without the use of said waters, said crops could not be produced. (Bill, par. 19, Tr., pp. 30 and 31.)

48 (12.) It is next alleged that while in its petition to the said commission for confirmation of its grant, the defendant City neither made nor asserted any claim to the waters of the Los Angeles River, or to the river itself, either by virtue of any express grant from the Spanish Government or from the Government of the Republic of Mex-

ico, or in virtue of any policy of said Governments, or either of them or in virtue of anv customary law of said Governments, or either of them; and while in confirming its said grant of the four square leagues of land, the said Commission in its finding and judgment, made no mention, finding or judgment in respect of said Los Angeles River, or its waters, or the waters of its tributaries,, yet, nevertheless, the defendant City, its officers and agents have claimed in the past, and do now claim that said City is the owner of the Los Angeles River and of all the waters of the said river, and of all the waters of its tributaries, passing through the said Ranchos, and all the waters of the said river from its sources of supply to the southern boundary limits of the City, and also all the waters percolating and existing in the lands of the complainants, as hereinbefore set forth, claiming the waters under the lands of the complainants, although the same do not constitute any stream, and are, strictly speaking, percolating waters only; and they further claim that the complainants have no right to pump the waters under their said lands, because the same might ultimately have the effect of reducing the supply in the surface and subterranean river, although the waters under the complainants' lands are percolating and do not flow by any definite or other channel into the surface waters of said river, and

53 do not constitute any part of the surface flow of the river. And the City, its officers and agents assert and claim the right at any time when the water is needed by the City or its inhabitants within the present enlarged boundaries, to take said waters and appropriate the same to its uses, and at the same time the City, its officers and
54 agents deny the complainants' right to any part of the surface water of the river, and deny them any right to pump any of the said percolating waters, for use upon their own lands, or for domestic uses, except subordinate to the said alleged paramount claim and right of the said City and its inhabitants to take and use the same. And the said City claims the right to prevent the com-
55 plainants from the use of any part of said waters, and threatens and are about to prepare, and intend to file in the State courts of California, a complaint, and institute an action to enjoin these complainants, severally, from using any part of the waters by them pumped from their several wells and used upon their several tracts of land. That said City rests its right and claim to said
56 river and to the waters thereof and to the waters in the lands of the complainants respectively, and to all the waters within the valley of the river, from its source or sources to the southern line of said City—

FIRST. Upon a construction of said Treaty of Guadalupe Hidalgo and upon a construction

of the Act of the Congress of March 3, 1851, and especially upon such a construction of Sections 8, 11, 13 and 14 of said Act, which construction is to the effect and intent that whatever rights the laws, customs and polity of the Spanish and Mexican Governments bestowed upon Pueblos, the defendant City, as successor to the Pueblo established by the Spanish Government and alleged to have been later recognized by the Mexican Government, especially in respect of the waters of the adjacent river and in respect of the river itself, are still possessed by said defendant City, although the said Section 13 of said Act of the Congress provides, "that all lands, the claims to which have been finally rejected by the Commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands, the claims to which shall not have been presented to the said Commissioners within two years after the date of this Act, shall be deemed, held and considered as part of the public domain of the United States"; and although said City, in its petition to said Commission, made no claim on account of any grant or any law, customary or statutory, or any public polity of either Government from which said grant of any right to the said river or its waters could be inferred or derived, except such rights thereto as were incident to any and all grants upon water courses.

61 SECOND. Said City rests its said claim to said river and its waters and the waters of the valley of said river, as hereinbefore set forth, upon certain laws enacted by the Legislature of the State of California and upon certain ordinances and charters enacted and adopted by the said City and approved by the said Legislature; which leg-
62 islative acts and which ordinances and charters were passed, enacted, ordained and approved because and in pursuance of such erroneous construction of said Treaty of Guadalupe Hidalgo and of the said Act of the Congress of the United States, approved March 3, 1851, and especially in pursuance of such erroneous construction of the said 8th, 11th, 13th and 14th Sections,
63 and of each of said Sections, of said Act; which erroneous construction is to the effect and intent set forth hereinbefore in this paragraph.

That said Acts of the Legislature of the said State of California, and said ordinances and charters ordained and enacted by said defendant City and approved by the Legislature of said State, are as follows:

64 FIRST. An Act of the Legislature approved March 26, 1874, entitled, "AN ACT TO AMEND THE CHARTER OF THE CITY OF LOS ANGELES, TO DEFINE ITS LIMITS AND RIGHTS, TO ENLARGE ITS POWERS, AND TO PROVIDE FOR ITS MORE EFFICIENT GOVERNMENT."

That Section 1 of Article II of said Act is as follows:

"That there be and hereby is granted to said corporation, to be by it held, used, and enjoyed in absolute ownership, the full, free, and exclusive right to all of the water flowing in the river of Los Angeles at any point from its source or sources to the intersection of said river with the southern boundary of said city; also the right to develop, economize, use, and utilize all waters flowing beneath the surface in the bed of said river at any point or points between the points of termini above given, and for that purpose it is hereby declared that the powers to condemn property outside of the limits of said city, given by the provisions of section two, Article Two, of this Act in so far as the same relate to the condemnation of property in water for increasing the water supply of said city, are intended to be given, and to be restricted to such sources of supply and to the rights therein, excepting and reserving from the operation of the aforesaid grant of the water flowing in said river, unless the same be condemned and taken for public use as herein provided, all vested private rights to the water flowing upon the surface or beneath it, in the bed of said river; *and provided*, that said corporation shall not in any manner dispose of, transfer, or convey any portion of said water, or any right to develop or use the same, or any portion thereof, to any corporation, association, individual, or other person who might or would use the same in any way prejudicial to the use thereof for irrigation within the limits of said city, or who might or who would at any time, for any good or valuable consideration, de-

sire to sell, or in any way dispose of to any other person, natural or artificial, any interest therein or right to the use thereof; *and, provided further,* that the zanjas which are within the limits of said city, known as the principal zanja and zanjas number one, two, three, four, five, six, seven, and eight, are hereby declared public zanjas; and the quantity of water which has heretofore generally flowed in each one of said zanjas is hereby declared to be the quantity which by right belongs to each one of said zanjas, and to the farmers and fruit growers who are benefited by their use. Any person or persons who shall throw, or cause to be thrown, any filth or matter detrimental to the public health, or allow their sewers or sinks to run or drain into any of said zanjas, shall be deemed guilty of a misdemeanor, and upon conviction thereof before the Mayor or any Court having jurisdiction thereof, shall be fined in a sum not exceeding one hundred dollars and not less than twenty dollars, for the first offense; and not more than three hundred dollars nor less than fifty dollars for every subsequent offense, or by imprisonment in the County Jail for not more than thirty nor less than five days, or by both fine and imprisonment. Any person violating this section shall be prosecuted before any Court of competent jurisdiction in the City or Township of Los Angeles, upon the complaint of any person aggrieved, or of the Overseer of Watercourses of said city. All moneys collected as fines under the provisions of this Act, shall be paid into the City Treasury of said city, to the credit of the Water Fund of said city, known as the New Water Fund."

73 SECOND. An Act of the Legislature approved April 1, 1876, entitled, "AN ACT TO REVISE THE AFORESAID ACT OF 1874," etc.

That by last last-mentioned Act, the said Legislature assumed to grant to the defendant City the same rights, in the same terms, as contained in the said Section 1, Article II of said Act of
74 March 26, 1874.

THIRD. An Act of said Legislature approved March 30, 1878, entitled, "AN ACT TO AMEND SAID ACT OF APRIL 1, 1876"; by Section 1 of Article II of which Act, the said Legislature, by the same terms as employed in the said Act of 1874, again assumed and pur-
75 ported to grant to defendant City, the said Los Angeles River, with powers in said City to control the development and distribution of the waters of the said river; omitting, however, the exceptions contained in said prior Acts in favor of vested private rights in the waters of said river.

That the ordinances and charters ordained, enacted and adopted by the said City and ap-
76 proved by the said Legislature of the State, are as follows:

FIRST. The Charter of said City prepared and proposed by a Board of Freeholders elected in the year 1888, in pursuance of provisions of the Constitution of the State of California, then in force, and which proposed Charter was sub-

77 mitted to the People of the City of Los Angeles, and by them adopted, and was thereafter submitted to the Legislature of the State of California, as in the Constitution provided, and was, by joint action of the two Houses of said Legislature, duly approved on the 31st day of January, 1889, as the Charter of the City of Los Angeles,
78 and said Charter did thereupon become the organic law of said City. A copy thereof, certified by the Mayor of the said City of Los Angeles and authenticated by the Seal of said City, setting forth the submission of said Charter to its Electors and its ratification by them, was made in duplicate, and one was deposited in the office of the
79 Secretary of State of the State of California, and the other recorded in the office of the Recorder of Deeds of the County of Los Angeles, State of California, and thereafter deposited among the archives of the City of Los Angeles, to be thenceforward, by the terms of the Constitution of said State, taken judicial notice of by all the Courts of said State.

80 Section 190, Article XVIII of the said Charter, is in the words and figures following, to-wit:

> "The City of Los Angeles shall continue in the ownership and enjoyment of all rights to the water of the River Los Angeles heretofore vested in it, its predecessor or predecessors, including the Pueblo of Los Angeles, and is hereby declared to have the full, free,

and exclusive right to all the water flowing in the said river at any point from its source or sources, to the intersection of said river with the southern boundary of said city, and also the ownership of and the right to develop, economize, control, use, and utilize all waters flowing beneath the surface in the bed of said river at any point or points between the points of termini above named." (Stats. of 1889, pp. 502-503.)

In the year 1902, in pursuance of the said provision of the State Constitution, a body of Freeholders was elected by the Electors of the said City, for the purpose of preparing and proposing amendments to the said Charter adopted as herein last before said; that such Board did prepare and propose to the Electors of said City, certain amendments of said Charter, and the same were, in due form, submitted to the Electors of said City, to be voted upon at the general municipal election held on the first day of December, in the year 1902, at which election the said amendments were duly adopted, more than three-fifths of the qualified Electors voting at said election, having voted in favor of the same; that thereafter the said amendments were submitted to the Legislature of said State, and were, by a joint resolution of the Senate and Assembly thereof, duly enacted and passed and duly approved on the 30th day of January, 1903, ratified and approved, and thereupon became, and have ever since been

85 in full force and effect as parts of the Charter of the said City of Los Angeles.

That said Section 190 of Article XVIII, in the language hereinabove quoted, was again re-enacted by the said City and approved, in manner aforesaid, by the said Legislature of the State.

86 And by the further amendments of said Charter, adopted and approved as aforesaid, a department known and named "Water Department" was instituted and organized and given jurisdiction to "manage and control all waters, water rights and water-bearing lands, and all water works, reservoirs, zanjas and ditches, belonging to the City." (Bill, pars. XX, XXI and XXII,
87 Tr. pp. 31 to 35 inclusive.)

(13.) It is alleged that under the said several Acts of the Legislature, and the charter and its amendments, the defendant City, through its officers and agencies constituted for that purpose, has asserted, does assert, and has assumed the right to take physical management and control
88 of the river and its tributaries and the waters of the valley, and has, through said agencies, asserted and exercised the right and authority to obstruct ditches and other conduits erected and maintained by owners of the lands in the valley above the City, and so to prevent the use of the waters of the river by the inhabitants of the val-

89 ley in irrigating the lands belonging to the complainants herein and others; which laws, charters and the said assertion and exercise of power and authority to control, at its pleasure, the waters of said valley, for the purpose of conserving them for the uses of the said City and its inhabitants, have resulted in the dustruction of the values of
90 complainants' lands, and each part and parcel thereof.

Complainants submit that said Acts of the Legislature and the ordinances and charters of the defendant City, are in violation of the Fourteenth Amendment of the Constitution of the United States, in that they deprive, or attempt to deprive, complainants severally of their property,
91 without due process of law, and to grant to and confer upon said City the right and title thereto.

And they allege and submit that said acts, ordinances and charters impair the obligations of the several contracts made through and by the several patents executed by the United States to the several predecessors in title of the complainants,
92 and that the said several Acts of the Legislature, and of the defendant City, including the charters of the City hereinbefore set forth, and including the ordinances of the City under which a department of it has asserted and exercised the right and authority to take physical control and possession of the river and its waters and of its trib-

93 utaries, and under which asserted right and authority the City, through its agencies, has interfered with the rightful use by the complainants, of the lands severally held and owned by them, and of the waters therein, and of the waters of the said river, are in violation of Section 1979, Title XXIV of the Revised Statutes of the
94 United States, in that the said defendant City, under color of said Statutes of the State of California, and under color of said charter provisions and of the ordinances aforesaid, has subjected, and caused to be subjected, the complainants to the deprivation of their property rights, privileges and immunities secured to them by the Constitution and Laws of the United States.
95 (Bill, pars. XXIII and XXIV, Tr. pp. 35 and 36).

(14.) It is further alleged that, notwithstanding all the before-recited acts of the said City and the laws enacted by the Legislature, and the confirmation by the Land Commission under the Act of March 3, 1851, of the title of defend-
96 ant City in and to the four square leagues, and the issuing of the patent, as aforesaid, the said defendant City never, at any time, held or professed to hold the said lands, or any part of them, in trust for the inhabitants of the City, but has held, and professed and still professes to hold such lands as owner and proprietor thereof, in its

97 own right as a municipal corporation; that thereafter none of such lands was allotted or assigned to the inhabitants, or any of them, according to the "Plan of Pitic," or according to any other rule, law or regulation established by either the Spanish or Mexican Government; but the same were sold, from time to time, to all comers,
98 whether inhabitants of the City or of said lands, or strangers and new-comers thereto; nor in making such sales, or any sales, has the City undertaken or agreed to furnish such lands with water from the Los Angeles River, or from any other source, upon any terms or conditions whatever; that the City has never made any provision to furnish such waters upon any notion or
99 theory, or upon any undertaking or agreement based upon such notion or theory that the waters of the Los Angeles River were in any way, appurtenant to the lands so confirmed and so held and sold by the defendant City; said City's claim being that it has the right to take the said waters as owner thereof and sell them to its inhabitants. (Bill, par. XXV, Tr. pp. 36 and 37.)

100 (15.) It is alleged further that the construction hereinbefore shown to have been placed upon the Act of the Congress of the United States of March 3, 1851, and upon the certain Sections thereof mentioned, is contrary to justice and equity and to a right and proper construction thereof, which right and proper construction,

101 complainants submit, is, that upon whatever the claimant to title to lands derived from Spain or Mexico, may have relied, whether upon an express grant or upon a grant implied by the general polity or by the customary law of the Spanish or Mexican Governments, such claimant must have presented his petition to the said Land
102 Commission, setting forth the ground of his claim, and the confirmation of such claim must have proceeded upon such ground; and that therefore the construction of the Act of March 3, 1851, insisted upon by defendant is erroneous, and that a sound and reasonable construction of said Act will secure the complainants in their rights as riparians to the waters of said river,
103 as well as to the waters within their lands, even though it be true that such latter waters because they do ultimately find their way by subterranean channels to the said river, are waters of such river. (Bills, par. XXVI, Tr. p. 37.)

(16.) It is then alleged and shown that the defendant City is rapidly increasing in popula-
104 tion; that in the past few years it has increased more than 100,000, its present population being 150,000 souls; that by repeated acts of its Common Council, the boundaries of the City have been extended far beyond the limits of the said four square leagues, and now embraces 28,000 acres of land, or 43 square miles; that the ter-

105 ritory is thickly, and large parts of it densely, populated; that the inhabitants of still other adjacent territory are seeking to be taken into the City and to have the boundaries of the City extended to embrace several thousand acres of land whereon such petitioners dwell, and the Common Council is contemplating and intending
106 to grant such petition, and basing their averment upon the past action of the City and its Common Council in that respect, complainants say that other areas of adjacent territory will be taken into the corporate limits of the City from time to time; that the inhabitants of such adjacent territory will be incited to seek annexation to, and incorporation in the City by the fact that the City
107 has claimed and does claim the right to take the waters of the Los Angeles River and of its tributaries and the waters in the lands of the complainants, and appropriate them to the uses of the inhabitants of said City, as well those occupying the territory annexed and taken into the said City, as aforesaid, as those occupying the original four leagues confirmed to the City as afore-
108 said.

And the City further claims that the complainants and all others similarly situated, have no right to such waters, or any of them, as against the City and its inhabitants, whenever the City shall determine that it needs such waters; that

109 complainants' present, or any use of such waters, is at the sufferance of the City, and that the City may prohibit their use at any time, and, in fact, is threatening, as aforesaid, to institute suits against complainants, for the purpose of enforcing and effectuating said claims.

Complainants further aver that the claims of
110 said City to the exclusive paramount title of the waters are without right, and that said claims and the threat it is making to institute action, and the dominion and physical control which it has exercised over the river and its waters, as hereinbefore set forth, and the said several Acts of the Legislature of California, and the said charters of defendant, purporting to confer upon it
111 the title of the river and its waters and declaring and asserting that such title to the river and its waters is vested in the City as successor to the Mexican Pueblo, have, and do cast a cloud upon the several titles of the complainants in said lands, and have, in large measure, destroyed the market value of their lands, and rendered them unsalable at other than ruin-
112 ously low prices; for the reason that the waters in said lands, and the right to use the same, and the right as riparians thereto, to use the waters of the Los Angeles River and its tributaries, in irrigating their lands, and for other reasonable uses, constitute the principal value of the lands,

and are worth to them from $300 to $600 an acre; that the waters in the lands of complainants are of the aggregate value of more than $1,000,000; that the claim of the City to the paramount title of said waters has diminished the market value of said lands,— has, in fact destroyed such market value, as aforesaid; that said lands and the waters therein, with the right to use such waters thereon, for irrigation and other purposes, are worth from $325 to $625 per acre; whereas, if the right so to use such waters does not exist except at the sufferance of the City, as it claims and contends and has given out, said lands are of no greater value than from $15 to $25 per acre, as such deprivation of them of the use of the waters within them, will render them arid and desert.

That the value of the matter in dispute, hereinbefore set forth, between the complainants and defendant City, and between each of said complainants and said defendant City, exceeds, exclusive of interest and costs, the sum of $2,000. (Bill, pars. XXVII and XXVIII, Tr. pp. 38 and 39.)

(17). The prayers of the bill are —

(1). The a decree be granted, removing the cloud cast by the defendant City upon the titles of the complainants to their lands, and that the Acts of the Legislature of the State of California, and the charters of said City, set forth in the bill,

117 be decreed and declared invalid in respect of conferring upon said defendant City any rights to, or interest in the waters of the Los Angeles River, acquired by the Pueblo of Los Angeles under the laws, usages or customs of Mexico or Spain, other than such as have been ascertained and confirmed under the Act of Congress of
118 March 3, 1851, entitled, "AN ACT TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA."

(2). That a decree be granted and entered, forever quieting the several titles of complainants to their said several lands, and especially to the
119 waters therein, and to the riparian right of each of them to use the waters of the Los Angeles River, as against the claim asserted by the defendant City to the paramount title in and to the said waters in the several lands of complainants, and in and to the waters of the Los Angeles River, which claim asserted to such paramount title is set forth in the former parts of the bill;
120 that is to say, as against any paramount title asserted and claimed by the City, as having been derived from Spain or Mexico, or from either of said Governments, or as having been derived from, or in anywise supported by the said Acts of the Legislature of the State of California, or either of such Acts, or as having been derived

121 from, or supported by the said charters of said City, or either of them, or any ordinance of said City; and that it be adjudged and decreed that complainants and defendant City have each and severally, such title only, derived from Spain or Mexico, or from both said Governments, as was confirmed to them or to their predecessors in
122 title, under the said Act of Congress of March 3, 1851, and as was, by the United States, granted by the patents executed to the respective confirmees of said several parcels of land.

(3). That there be granted unto each of the complainants further decrees, forever enjoining the said City of Los Angeles, its officers, agents and servants, from setting up or asserting such
123 paramount right and title to the waters aforesaid, as in this bill is shown to have been, and to be yet asserted by said defendant, as derived from Spain and Mexico, or from either of them, and from the confirmation of its claim to the four leagues of land by the Tribunals of the United States, and the grant to it under such confirmation, of said
124 lands, in pursuance of the said Act of March 3, 1851; and further enjoining said defendant from asserting and from exercising dominion and physical or other control over the said river and its waters, and over the waters tributary to the said river, and the waters in the lands of the complainants, and each of them, under such claim of

125 such paramount title as having been so derived; and further enjoining the City from asserting such paramount title to, and from exercising, or attempting to exercise such dominion and control over the said river and the said waters, under or in virtue of the said Acts of the Legislature of the State of California, or of either or of any 126 of them, or of said charters or ordinances of said City, or either of them. (Tr. pp. 39 and 40.)

ABSTRACT OF DEFENDANT'S ANSWER TO COMPLAINANT'S BILL.

(18). The answer comprises about 25,000 words, and purports, and was, no doubt, intended 127 to be a full answer to the merits. It may be observed that while the pleading itself fails to disclose any such object, it transpired at the hearing below that certain passages in it were intended to serve as a plea to the jurisdiction of the Court. It should seem, therefore, that since the sole question arising upon this appeal is that of *jurisdiction*, it will not be necessary, or in the 128 least useful, to make abstracts of such parts of the pleading as clearly do not bear upon that subject. We shall, therefore, confine ourselves to those parts which we have been given to understand, defendant relies upon, and such other parts as seem to us proper and even important to be considered, if, indeed, it be allowable to consider

129 the answer at all in determining the question of jurisdiction.

Far the greater portion of the pleading consists of denials, of specific admissions, qualified admissions and qualified denials.

(19). Tr. p. 49: "This defendant admits that it claims the paramount right to the waters
130 of said Los Angeles river by virtue of grants, laws, usages, and customs of the Republic of Mexico and the Kingdom of Spain, and the act of the legislature, passed April 4th, 1850, mentioned in paragraph XVIIIa of said amended bill of complaint;" and then proceeds to deny that such sources of title are the only ones through which it claims, but avers that it also claims the para-
131 mount right by virtue of long and continued use, and by various grants and conveyances from private individuals, and by various judgments and decrees of Courts, and by virtue of the patent from the United States to the four square leagues of land.

(20). Tr. p. 50: "This defendant denies that it claims that said last-mentioned act of the
132 legislature granted to the municipal corporation, thereby created, any vested private rights, if any, to the Los Angeles river, mentioned in said paragraph XVIIIa, or the waters thereof, or the right to the use of the same, or any part thereof, or any water right whatsoever, if any, which was, at the time of the passage, approval or taking effect of

said act, vested in the complainants in this suit, or any of them, or in the predecessor or predecessors in interest of said complainants, or any of them; but, on the contrary, this defendant disclaims having acquired, under the said last mentioned act of the legislature, any right, if any, to said Los Angeles river, or to the waters thereof, or the use of said waters, or any part thereof, or any other water or right whatsoever, if any, which was, at the time of the passage, approval or taking effect of said act, vested in said complainants, or any of them, or the predecessor or predecessors in interest of said complainants, or of any of them, or in any private individual or private corporation whatsoever."

(21). Tr. p. 50: "After admitting the passage of the Act of the Legislature of April 4, 1850, set forth in paragraph XVIIIa of the bill, defendant proceeds: 'This defendant admits that it never procured confirmation of or had ascertained or settled, under the act of Congress of March 3, 1851, mentioned in said paragraph XVIIIa, any rights of the Pueblo of Los Angeles, or of this defendant, as its successor, in or to the waters of said Los Angeles river, other than as confirmed, ascertained and settled by the proceedings, alleged in said amended bill of complaint to have been taken by the city of Los Angeles before the board of land commissioners under said act of Congress."

137 (21). Tr same page: "This defendant denies that it, as successor of said pueblo is not now the owner of any right, or rights formerly owned by said pueblo, in the waters of said Los Angeles river, other than such as passed under the grant of the land confirmed to this defendant by the patent mentioned in said paragraph
138 VXIIIa; but, on the contrary, this defendant alleges that it is, and ever since said act of the legislature, passed April 4th, 1850, it and its predecessors have been, the owner of all of the rights possessed by said pueblo of Los Angeles with respect to the waters of said Los Angeles river, by and through other sources of title than the said confirmation and patent, and that said confirma-
139 tion and patent were only in recognition of a previously granted and existing right, which had been vested in said pueblo of Los Angeles from its founding up to its dissolution by said act of the legislature, passed April 4th, 1850, and which became vested in the municipal corporation, created by said act, under and by virtue of the same."

Immediately following these averments, de-
140 fendant proceeds to deny that the Acts of the Legislature, proceedings and acts and charters of this defendant, referred to in said paragraph XVIIIa of the bill, are, or that any one of them is, a cloud upon the titles of said complainants, or of any of them, to the riparian lands, mentioned in said paragraph, or any of them, or any part

thereof, or grievously affect or hinder complainants, or any of them, in the use, enjoyment or sale of said lands, or any of them, but, on the contrary the defendant alleges that the complainants did not, nor did any of them, at the time of the commencement of this suit, have, nor do said complainants, or any of them, now have, any right, title or estate in or to the waters of the Los Angeles river, or any part thereof, or in and to the use of said waters, or any part thereof, save in subordination and subject to the paramount right of the defendant to take and use all of the waters of the river to the extent of its necessities for all purposes for which the defendant, or its inhabitants, may desire to use such waters.

(22). Tr. p. 52: The defendant denies, on information and belief, that under and by virtue of the patents and mesne conveyances, referred to in paragraph XIX of the bill, or any of them, said last-mentioned waters, or any part thereof, belong to the complainants by reason of their several or other ownerships in the land, mentioned in said paragraph, or by reason of any other matter or thing whatsoever, or that said complainants, or any of them, have, or ever had, any ownership of said waters, or any part thereof, save in subordination and subject to the paramount right of the defendant to take and use all of the waters so far as it and its inhabitants might

145 need the same for any purposes for which the defendant and its inhabitants might desire to use the same.

(23). Tr. p. 54: The defendant admits that it, and its officers and agents have claimed in the past, and now claim, that it is the owner of all the waters of the river, and of all of the waters
146 of its tributaries, passing through the Ranchos mentioned in the bill, and all the waters of the river from its sources to the southern boundary limits of the City, and all the waters percolating and existing in the lands of the complainants, described in the bill, and the waters under the lands of complainants.

(24). Tr. p. 55: Defendant admits that it
147 rests its right and claim to the Los Angeles River, and the waters thereof, including the waters in the lands of the complainants in this suit, in part, upon the Treaty of Guadalupe Hidalgo, but denies that it rests said right and claim upon a construction of the said Treaty other than the manifest, undoubted and indisputable meaning thereof, namely, that the rights of pueblos in the
148 present State of California were intended to be protected by said Treaty, as well as the rights of private individuals. Defendant further admits that it rests its right and claim to said river, and to the waters thereof, including the waters in the lands of complainants, in part, upon the Act of Congress, referred to in paragraph XXI of the

149 bill, but denies that it rests its said right and claim upon a construction of said Act of Congress, or upon a construction of Sections 8, 11, 13 and 14 of said Act, other than the manifest, undoubted and indisputable meaning thereof, namely, that the claims of pueblos in the State of California, or of municipal corporations succeeding such
150 pueblos, were authorized by said Act to claim confirmation to such pueblos or municipal corporations of the pueblo lands granted to such pueblos by the Spanish and Mexican Governments in the State of California, and that the confirmation of such lands had the effect also of confirming all water rights which were appurtenant to such pueblo lands during the Spanish and Mexican
151 regimes in said State, and that said Act did not require claims for property acquired under the laws of Spain and Mexico in said State, other than lands, to be presented for confirmation.

(25). Tr. same page: Defendant denies that it rests its claim to the Los Angeles River and its waters, including the waters in the lands of complainants, upon the laws enacted by the
152 Legislature of the State of California, and the ordinances and charters adopted by the City of Los Angeles and approved by the Legislature, except only to the extent that the charters of the defendant and its predecessors as contained in the Acts of the Legislature of the State, mentioned in the bill and in the charter adopted by the

voters of the City of Los Angeles and approved by the Legislature, had the effect of vesting and continuing in the defendant and its predecessors, the municipal corporation created by the Act of the Legislature of April 4, 1850, and the other Acts of the Legislature and charter mentioned in the bill, such rights with respect to the waters of the Los Angeles River as were possessed by the Pueblo of Los Angeles immediately before its dissolution by said Act of the Legislature of April 4, 1850, and such rights with respect to the waters of the said river as might have been vested in the State of California upon its admission to the Union; but defendant denies that it claims that the Acts of the Legislature of the State of California, and the charters of the City of Los Angeles, mentioned in the bill, or any one of them, granted to the Mayor and Common Council of the City of Los Angeles, or to the City, the predecessor of this defendant, any vested private right, if any, to any water flowing or being upon the surface or beneath it in the bed of the Los Angeles River, or any water, or right whatever, which was, at the time or times of the passage of said Acts, or any of them, or at the time of the adoption or approval of the charter, vested in the complainants, or any of them, or in the predecessor or predecessors in interest of the complainants, or any of them; but, on the contrary, the defendant disclaims having acquired

under said Acts, or any of them, or under the charter, any right to the water flowing upon the surface or beneath it in the bed of the river, or any other water or right whatsoever, which was ever vested in the complainants, or any of them, or in the predecessor or predecessors in interest of the complainants, or any of them, or in any private individual or private corporation.

(26). Tr. p. 57: Defendant denies that it claims, or ever claimed, that there was granted by said Acts of the Legislature, or by the charter, to the Mayor and Common Council of the City of Los Angeles, or to the City, the predecessor of this defendant, any right to develop waters percolating under the bed of the Los Angeles River, or elsewhere, which was, at the time of the passage of said Acts, or any of them, or at the time of the adoption or approval of the charter, vested in the complainants, or any of them, or in the predecessors of complainants, or in any private individual or corporation, and it disclaims that said Acts of the Legislature, or any of them, or the charter, or any other Act of the Legislature or charter, had the effect of granting to the City, the predecessor of the defendant, any right to develop water percolating in the bed of the Los Angeles River, or elsewhere, which was at the time of the passage of the Acts, or any of them, or at

161 the time of the adoption or approval of the charter, vested in the complainants, or any of them, or in the predecessor or predecessors of complainants.

(27). Tr. p. 58: Defendant denies that the legislative acts and the ordinances and charters, mentioned in paragraph XXI of the bill were,
162 or any one of them was, passed, enacted, ordained or approved, because or in pursuance of the alleged erroneous construction mentioned in said paragraph of said Treaty of Guadalupe Hidalgo, or of said Act of Congress, or especially in pursuance of the alleged erroneous construction of Sections 8, 11, 13 and 14 of said Act of Congress, or of either of said Sections, or of any other er-
163 roneous construction whatsoever; but, on the contrary, defendant alleges, on information and belief that said legislative acts, ordinances and charters were passed, enacted, ordained and approved with the intention of asserting that which was supposed to be a fact, namely, that the City of Los Angeles was the owner of all the rights pos-
164 sessed by the Pueblo of Los Angeles with respect to the waters of said Los Angeles River, which rights embraced the paramount right to take and use all of the waters of said river to the extent of the needs of the City and its inhabitants for all purposes for which it or they might desire to use said waters, and not with the intention or purpose of depriving the complainants, or any of

165 them, or the predecessor or predecessors of the complainants, or any of them, or any other private individual of any right to the waters of the river.

(28). Tr. p. 58: Defendant admits the passage and approval of the three Acts of the Legislature of the 26th day of March, 1874, the 1st
166 day of April, 1876, and the 30th day of March, 1878, mentioned in paragraph XXII of the bill, but defendant denies that there was intended, by said Acts, or any of them, to be granted to the City of Los Angeles, any right to the water flowing in the Los Angeles River, or to develop, economize, use or utilize all or any water flowing beneath the surface in the bed of said river, which
167 was then vested in the complainants in this suit, or any of them, or in the predecessors of said complainants, or any of them, and defendant alleges that it was not stated, nor intended in said Acts, or any of them, that the grant, therein purported to be made of the right to the water flowing in the river, and of the right to develop, economize, use and utilize all waters flowing beneath the sur-
168 face in the bed of the river, should divest any private person of any vested private rights to the water of the river.

(29). Tr. p. 59: It is alleged that it was not stated nor intended in the charter mentioned in the bill, that the grant therein purported to be

made of the right to the water flowing in the Los Angeles River, and of the right to develop, etc., the said water, should divest any private person of any vested private rights to such water. Defendant denies that it claims that the amendments to its charter, set forth in paragraph XXII of the bill, granted to it any vested private right with respect to the waters of the Los Angeles River, or any right to manage or control any waters, water rights, etc., which was at the time of the adoption and taking effect of said amendments, vested in the complainants, or any of them, or in the predecessors of any complainants, or in any private individual; but, on the contrary, the defendant disclaims having acquired, in or by said amendments, any right with respect to the waters of the Los Angeles River, or to manage or control the same, which was, at the time of the adoption, vested in the complainants, or any of them, or in their predecessors, or in any of them.

(30). Tr. p. 61: Beginning at the last line: Defendant admits that it has, under the Act of the Legislature of April 4, 1850, mentioned in the bill, asserted and assumed the title to all of the rights possessed by said former Pueblo of Los Angeles with respect to the waters of the river, including all the waters in the lands of complainants; but defendant denies that, under said Act, it has asserted, or does assert, or has as-

sumed, any right with respect to the waters of said river which was, at the time of the passage or approval of said Act, or at any time since, vested in the complainants, or any of them, or in the predecessor or predecessors of the complainants, or any of them, and not since acquired by the defendant, or its predecessors, from complainants or their predecessors in interest.

Defendant also admits that it has asserted, and does assert, and has assumed, under its present charter, mentioned in said bill, the corporate power of taking physical management and control of all property belonging to the defendant, but not of any property belonging to the complainants, or any of them, nor where such physical management or control cannot be exercised without a breach of the peace or committing physical violence, or where such property is located on or in any of the lands of said complainants, or any of them; and the defendant disclaims that said charter and amendments, and said Act passed April 4, 1850, or the other Acts of the Legislature, mentioned in paragraph XXIII of the bill, or any of them, gives or grants to it the right to take physical, or other management or control of any property belonging to the complainants.

(31). Tr. p. 62: The defendant denies that the Acts of the Legislature, and the ordinances and charters of the City, mentioned in the bill,

177 are, or that any one of them is, in violation of the Fourteenth Amendment of the Constitution of the United States, or that they deprive or attempt to deprive the complainants, or any of them, of their property, without due process of law, or at all, or to grant or to confer upon the defendant the right or title of any property of the complain-
178 ants, or that the ordinances and charters mentioned in the bill, impair the obligation of the several contracts made through and by the several patents executed by the United States to the several predecessors in title of the complainants: and further denies that the several Acts of the Legislature and of the defendant, including the charters and ordinances of defendant, mentioned
179 in paragraph XXIII, or any other Act or Acts of the Legislature, or charters or ordinances of defendant, are in violation of Section 1979, Title XXIV, of the Revised Statutes of the United States, or that the defendant, under color of the said Statutes of the State of California, or any of them, or under color of the charter provisions and of the ordinances mentioned in the bill, or
180 otherwise, has subjected or caused to be subjected the complainants, or any of them, to the deprivation of property rights, privileges, or immunities secured to them by the Constitution or Laws of the United States.

(32). Tr. p. 65: Defendant denies that the construction attempted to be placed on said Act

of Congress, by complainants, in paragraph XXVI of the bill, is right or proper, or consistent with justice or equity, or that, according to the right and proper construction of said Act, the claimant to title to water rights derived from Spain or Mexico, upon an express grant, or upon a grant implied by the general polity or the customary laws of the Spanish and Mexican Government, must have presented his or its petition, setting forth the grounds of his or its claim, or that the confirmation of such claim must have proceeded upon such grounds; but, on the contrary, defendant alleges that the forfeiture, attempted to be invoked in said paragraph, is contrary to justice and equity, and the construction attempted to be placed on said Acts of Congress in paragraph XXVI of the bill, is contrary to the plain, manifest, undoubted and indisputable meaning of said Act.

And defendant denies that a sound and reasonable or proper construction of said Act of Congress will secure the complainants, or any of them, in any rights as riparians, or as riparian owners, to the waters of said Los Angeles River, or the waters within the lands of said complainants, or any of them; but, on the contrary, defendant alleges that, according to the only fair, reasonable and proper or possible construction of said Act of Congress, the confirmation and patent therein provided for, had the effect of only

185 confirming to the confirmee and patentee therein the lands therein described, but subject to all of the easements and servitudes which were imposed thereon by the laws of Spain and Mexico in favor of third parties, including the rights to the waters of unnavigable streams which were attached to other lands or which belonged to
186 pueblos or private individuals other than the grantees, in the grants so confirmed and patented, and that, where such water rights were appurtenant to any lands granted by the Spanish and Mexican Governments, and so confirmed and patented, under said Act of Congress, such water rights passed by such patents as appurtenances, and a claim for such water right was not
187 required by said Act of Congress to be confirmed or patented.

(33). Tr. p. 67: Defendant admits that it claims that complainants, and all others similarly situated, have no right to the waters of the Los Angeles River, including the waters in their lands, as against this defendant and the inhabitants of the City, whenever this defendant shall
188 determine that it needs said water, and that the present use by said complainants of such waters is at the sufferance of the defendant, and the defendant may prohibit their use of the water at any time and admits that defendant is threatening to institute suits against the complainants for the purpose of enforcing its said claim.

189 We believe the foregoing parts of the answer embrace all admissions, denials and averments of new matter which, in any way touch upon or affect the question of the jurisdiction of the Circuit Court.

(34). There are other answers, giving an account of actions between defendant City and cer-
190 tain owners of lands in the valley of the Los Angeles River, but these so manifestly deal with matters which, if good for any purpose, respect the merits and not the jurisdiction of the Court, that we shall no more than refer to them. (Tr. p. 72 to p. 87.)

We quote the paragraph concluding the answer, as it seems to be predicated of the whole
191 pleadings:

"Wherefore, this defendant, having shown to the court by this answer that it has no jurisdiction of this cause, prays that the said amended bill of complaint be dismissed for want of such jurisdiction." (Tr. p. 87).

(35). The complainants filed joint and several exceptions to portions of the answer of de-
192 fendant, for impertinence. (Tr. p. 88 to p. 111.) And at the same time they filed joint and several exceptions to portions of said answer, for insufficiency. (Tr. p. 111 to p. 114.)

The Court declined to take any notice of, or action upon said exceptions, upon the ground, as

193 we understand, that having determined that it had no jurisdiction of the cause, might not, or, at least, would not, consider the pleadings for any purpose but that of determining that question.

What part or parts, or whether any part of the answer was considered, in arriving at the con-
194 clusion that the Court had no jurisdiction, we have not been advised, but we submit here, that if the answer was considered and allowed to have any weight, the exceptions should have been attended to, since in such case, complainants were entitled to have whatever was impertinent or insufficient eliminated or made sufficient, and only what was pertinent and sufficient considered.

195 (36). Arguments having been had, upon the motion of defendant to dismiss the bill and cause for want of jurisdiction, the Court, on the 23rd day of January, 1905, granted said motion, dismissing the said bill and cause, without prejudice, however, to the right of complainants to bring a new bill of complaint in any Court having jurisdiction; to which ruling of the Court, complain-
196 ants' counsel excepted, which exception was noted and allowed and entered in the record, and thereupon a decree that the said bill be dismissed for want of jurisdiction, was ordered, (Tr. pp. 116 and 117), and on the same day such decree, duly signed by the presiding Judge, was entered, (Tr., p. 117). Whereupon, on the same day, com-

197 plainants filed their petition for an appeal from said judgment and decree to the Supreme Court of the United States, and filed with said petition, an asignment of errors, hereinafter set forth in full, and the said appeal was thereupon allowed, and the order allowing the same was duly signed and entered, followed by a certificate of the pre-
198 siding Judge, that the jurisdiction of the Circuit Court was in issue in the cause, and that the decision therein was made and rendered solely upon that question, and the question of such jurisdiction alone, was certified to the Supreme Court for decision. (Tr. pp. 118, 119 and 120.)

(37). The errors assigned and filed, omitting the caption, title and the names of the parties,
199 which will be found on pages 120 and 121, Transcript, are in the words following:

> "*First.* Because the court erroneously dismissed the said bill and the said suit, on the ground, as stated by the court, that said court had no jurisdiction of said suit.
>
> "*Second.* Because it appeared by the bill of complainants herein, that the said court had jurisdiction of the suit and erroneously
200 dismissed the said bill and the said suit.
>
> "*Third.* Because it appeared by the bill and answer in said suit, that the court had jurisdiction thereof and erroneously dismissed the said bill and suit for lack of jurisdiction.
>
> "*Fourth.* Because it appears by said bill, that the suit involved the construction and application of the Constitution of the United

201 States, but, notwithstanding, the court erroneously dismissed the said bill and suit.

"*Fifth.* Because it appears by said bill and answer, that the suit involves the construction and application of the Constitution of the United States, but, notwithstanding, the court erroneously dismissed said bill and suit, on the ground that the court had no jurisdiction thereof.

202 "*Sixth.* Because the court erroneously entertained defendant's motion to dismiss said bill and suit, though such motion was founded upon said bill and defendant's answer to the merits, which bill and answer show the court had jurisdiction of said suit.

"*Seventh.* Because the court erroneously granted defendant's motion to dismiss said bill and suit, upon the ground that said court had no jurisdiction thereof, though said motion was founded upon said bill and defend-
203 ant's answer to the merits, which show the court had jurisdiction of said suit.

"*Eighth.* Because it appears by said bill, that the construction and application of the treaty of Guadalupe Hidalgo were involved but the court, notwithstanding, erroneously dismissed the said bill and suit for want of jurisdiction.

"*Ninth.* Because it appears by the bill, that the construction and application of the
204 act of Congress of the United States, approved March 3, 1851, entitled, "An Act to ascertain and settle the private land claims in the State of California," were involved, but the court, notwithstanding, erroneously dismissed said bill and suit, on the ground that said court had no jurisdiction thereof.

"*Tenth.* Because it appears by the bill and answer, that the construction and application of the said act of the Congress of the

205 United States, approved March 3, 1851, were involved, and that there was, and is, a controversy between the complainants and defendant as to such construction and application of said act, but the court, notwithstanding, erroneously dismissed said bill and suit, on the ground that said court had no jurisdiction thereof.

"*Eleventh.* Because it is made to appear
206 by complainants' said bill, that the defendant, The City of Los Angeles, has, under color of certain statutes of the legislature of the State of California, and of certain charters of the defendant city, approved by the said legislature, which acts and charters are set forth in said bill, subjected, and caused to be subjected the complainants in said bill to deprivations of their several property rights, privileges and immunities, secured to them by the Constitution and laws of the
207 United States, and in violation and disregard especially of Sec. 1979, title XXIV of the Revised Statutes of the United States; but, nevertheless, the court erroneously dismissed said bill and suit, on the ground that said court had no jurisdiction thereof.

"*Twelfth.* Because it appears in said bill that certain of the laws of the legislature of the State of California were claimed and alleged by complainants to have had the ef-
208 fect to cast clouds upon the several titles of complainants and thereby to destroy the values of their property, and that such laws were in contravention of the Constitution of the United States; but, nevertheless, the court erroneously dismissed said bill and suit, on the ground that said court did not have jurisdiction thereof.

209 "*Thirteenth.* Because the court erroneously decided that defendant's answer contained a sufficient disclaimer of title under the statutes of California, and the charters of defendant, set forth in the bill, to oust the jurisdiction of the court in said suit

"*Fourteenth.* Because the court erroneously dismissed the bill and suit, although it appeared by said bill that Federal ques-
210 tions were involved.

"Wherefore, the said complainants pray that said decree be reversed, and that said court be directed to set aside the decree dismissing their bill herein, and to render a decree in favor of complainants, in accordance with the prayer of their said bill

"McNUTT & HANNON,
"STEPHENS & STEPHENS,
"WARREN E. LLOYD,

"*Solicitors for Complainants and Appel-*
211 *lants.*"

(Tr., p. 121 to p. 123.)

(38). The order of the Court allowing an appeal to the Supreme Court, and fixing the bond to be given by the complainants, on such appeal, in the sum of three hundred dollars, is found on page 124, Transcript, and the bond, which was executed, approved by the Court, and filed,
212 occurs at pages 124, 125 and 126 of the Transcript.

Appellants' Brief of Argument.

I.

Of the Federal Question.

We submit that appellants' bill of complaint, tested by the rather rigorous rules upon that subject, will be found to involve and present not merely one, but several federal questions. The sum of these rules is, that the federal question must arise out of the necessary averments of the declaration, or bill of complaint; that is, out of averments, without the presence of which the pleading would be insufficient to entitle the plaintiff to the relief sought; or, if such figure of speech may be indulged, the federal question must spring out of the soil of the pleading, as indigenous there, and not appear as a mere exotic, imported by the pleader to give color of jurisdiction.

It should be observed here, that it is implicitly but very clearly admitted that federal questions are presented in the bill, otherwise a demurrer for want of jurisdiction—which is the appointed and usual method of raising that question—would have been filed and presented to the bill. It should seem, moreover, that it is, in like manner, implicitly admitted, that at least one federal question is properly presented, since the effort is

made, and several times repeated, in the answer filed, to avoid and eliminate that question by what is characterized as *disclaimers*.

It did, however, transpire in the course of the hearing below, that the Court proceeded in dismissing the bill and cause, in part, at least, upon the notion that a bill entitling complainants to the relief sought in this proceeding, could be framed without any of the averments in respect of matters involving federal questions. In support of this view, reference was made to the case of California Oil & Gas Co. v. Miller, 96 Fed. R., p. 12; the decision in which, was rendered by the same judge who presided below in the present case, and was, if we rightly understand it, based upon Section 738, Code of Civil Procedure of the State of California, and upon certain decisions of the Supreme Court of that State, in respect of the pleadings under that section in the State courts. The section embraces at least one class of cases in which actions to quiet title may be instituted, not embraced in any previous statutes of the State, nor within the equity jurisdiction of that subject, in that it provides that such action may be brought by *any* person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim; that is to say, one not in possession may bring such action, whereas, prior to

the enactment, the person in possession only could do so. That decision is not applicable to the present case. The present cause was not brought under Section 738, Code of Civil Procedure of California, nor does it in any respect relate to that section. This is not a suit to quiet title generally, as contemplated by that section. The bill is one to remove clouds from complainants' titles.

It is true that some contention has been made that this section of the California Code has dispensed with the necessity for any other proceeding than that it provides, and that, therefore, if the party seeks any remedy in respect of clearing his title of adverse claims, he must proceed under that section.

The effect of this contention is entirely to destroy the equity jurisdiction of the Circuit Court of the United States, in a large class of cases heretofore entertained by that Court, and universally regarded as causes cognizable in equity. This, we submit, is not the law. It is true that this Court has held that where the Legislature of a State has enlarged the remedy in a given case, whether it be at law or in equity, the Federal Courts will administer such remedy; but they will do so in accordance with the law and the rules governing their procedure; that is to say, if the remedy be one to be administered in equity, it will be administered according to the rules governing

procedure in that jurisdiction; if it be one to be administered at law, it will be administered in accordance with the procedure there.

But this Court has never held, so far as we can find, or are advised, that such new remedies will be construed as having abrogated any remedy which those Courts have, from the beginning, administered when sitting as Courts of chancery. But it is not true in fact, that the section of the California Code referred to, either has superseded, or was intended to supersede, all other remedies in respect to quieting title, or to removing clouds from title. This is made clear and indubitable by the fact that in the same Code in which section 738 is found, the remedy for removing clouds from title is recognized by section 381 thereof. Indeed, it has been held that under section 738 itself, actions to remove clouds from title may be maintained.

In the case of Angus et al., executors, etc., v. Craven, 132 Cal. 691, the plaintiffs brought an action to have a forged deed—which had been fraudlently acknowledged and recorded, and under which the defendant was claiming title—delivered up for cancellation, and the cloud thereof removed from the title of plaintiffs' estate. The remedy was administered, although the action was brought under section 738, though the re-

lief was referred to section 3412 of the Civil Code of California. The Supreme Court say:

> "The cancellation of a forged deed, fraudulently acknowledged and recorded, under which the defendant claims title, and which is *prima facie* valid, by reason of the fraudulent acknowledgment and record, and operates as a cloud upon the title of the plaintiffs, is clearly of the nature of equitable relief, under section 3412 of the Civil Code; and the issues upon which such relief is based are not triable by jury."

Again in Collins, Administrator, v. O'Laverty, an action was brought by the administrator to set aside and cancel the deed executed by the decedent. The Court say:

> "An administrator may maintain a suit to quiet the title of the estate against any adverse claim; and a suit to set aside and cancel a deed of the decedent, for want of capacity of the grantor, and for undue influence and fraud of the grantee in taking advantage of the incapacity, illness, and weakness of mind of the grantor to procure the deed, is in effect a suit to quiet the title of the estate against a pretended grantee." [136 Cal., p. 31.]

It will thus be seen that while the Court treated the proceeding as if it had been one to quiet title, under section 738, yet it recognized the right of a party to proceed as he might always have done in chancery, to remove a particular cloud from his title.

In the case of Alcorn et al. v. Buschke et al.,

133 Cal. 655, the plaintiffs brought an action to remove cloud from title. In their complaint they set forth their deraignment of title and the particulars with respect to the defendants' deraignment of title, and alleged that such title had its origin in an invalid deed, executed under an alleged power of attorney. In short, the complaint contained the substance, though it no doubt lacked some of the formalities, of a bill in chancery to remove a cloud from title, and the Supreme Court approved it as a proper and sufficient pleading.

Bolton v. Gilleran, 105 Cal. 244, was an action to have adjudged invalid, as a cloud upon title, the lien arising out of a street assessment. The complaint set forth specifically the facts, both in respect of plaintiff's title, and of the origin and nature of defendant's claim, and again, might have served as a bill in equity to remove a cloud from title, and the Supreme Court approved the proceeding, observing:

> "The statute makes the assessment a lien upon her land, and there is nothing upon the face of the assessment to show that it is not in all respects valid. If, by reason of matters outside of the assessment as it is recorded, this apparent lien may be shown not to be a valid encumbrance, the assessment constitutes a cloud upon her title, which she is entitled to have removed," etc.

And elsewhere, in the opinion, after stating

the case, it is said: "The right of the plaintiff to maintain the action is clearly established."

Other cases in California might be cited, but these will suffice to establish the proposition, that section 738, C. C. P., of that State, has not been regarded by the Courts there as having abolished the right to maintain actions to remove clouds from title.

If, however, it had been construed by the State Court as having such effect, we conceive that it would in nowise have limited the jurisdiction of the Circuit Court to hear and determine a suit to remove such cloud from title, since it has never been held by this Court that any action of the State Legislature, or any decision of the State Court, can limit the jurisdiction of the Federal Courts, or in any way affect the procedure in such Courts in chancery causes, and we have given attention to this matter only because it was made clear in the course of the hearing below, that the learned Judge presiding in this cause was largely influenced in his determination of the question of jurisdiction by the view he entertained upon this subject, which view is made more fully to appear in the case of California Oil & Gas Co. v. Miller, already cited.

It has been so often decided by this Court that the equity practice in the Federal Courts is not affected by the legislation, or the practice pre-

scribed by legislation, or by the Courts, in the various states, that it would seem unnecessary to say more upon the matter now under consideration, but since the view which we have been combating, seemed to have so much weight in the determination of this case below, we may be pardoned for referring to a few of the many cases in which this Court has considered the subject.

The original jurisdiction in equity, it has been said here, conferred by the Constitution on this Court, imposes the duty to adjudicate according to the rules of the English chancery court, as administered from the time of the emigration of our ancestors, down to the period when the Constitution was formed.

State of Penn. v. Wheeling, etc., Bridge Co., 18 How. 492.

The equity jurisdiction of the Federal Courts is the same as the English high court of chancery, and is not subject to limitation or restraint of State legislation.

Payne v. Hook, 7 Wall. 430.

Equity practice and jurisdiction of Federal Courts is uniform throughout the United States, and cannot be varied by State laws.

Russell v. Southard, 12 How. 147.

The Act of 1872, requiring pleading and procedure in civil causes in the Circuit and District Courts to conform, as near as may be, to the prac-

tice in State Courts, has no application to equity or admiralty causes.

Blease v. Carlington, 92 U. S., p. 8;

Bucher v. Cheshire R. R., 125 U. S. 582.

Though State Legislatures may abolish, in State Courts, the distinction between actions at law and actions in equity, by enacting that there shall be but one form of action, which shall be called "civil action," yet the distinction between the two sorts of proceedings cannot be thereby obliterated in the Federal Courts.

Thompson v. R. R. Companies, 6 Wall. 134.

This brings us to an examination of appellant's bill of complaint, and to the inquiry, Does it present, necessarily and properly, a federal question, or federal questions? We believe that a just answer to this inquiry would be that, it presents federal questions only, and that the cause could not be determined, nay, that the slightest progress could not be made toward its determination, without considering such questions.

The material averments of the bill are:—

That under the Spanish and Mexican rule in California, grants were made of three Ranchos, lying in what is now the County of Los Angeles, in said State; that one of these, the Rancho San Rafael, was granted by the Kingdom of Spain, on the 20th of October, 1784, to the person

named; that the other two, the Rancho Los Felis and the Rancho Providencia, were granted to the persons named in the bill, by the Republic of Mexico; that the grantees, or their successors, continued to be the owners thereof, and were such owners, at the date of the acquisition of the territory by the United States; that they were entitled, as such owners, to all the rights and benefits of the Treaty of Guadalupe Hidalgo, and especially of Articles VIII and IX of said Treaty; that after the Act of March 3, 1851, entitled, "AN ACT TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN CALIFORNIA," said grantees, or their heirs, or successors, severally, presented their claims before the Commission created by that Act, to have the title in said Ranchos confirmed in them respectively; that such titles were confirmed, and that patents were issued by the Government of the United States, to the respective confirmees, and that the title so confirmed and so granted to each of the confirmees, was a fee simple in each of the said Ranchos. The complainants, in the bill, set forth that they are, through mesne conveyances ,and each one of them is, a successor of, and deraigns his title from one or other of such confirmees and patentees, and that they are, each and all, owners in fee simple of the par-

cels of land described in the bill as belonging to them respectively.

The bill further proceeds to set forth and aver that the defendant, The City of Los Angeles, on the 26th day of October, 1852, filed, before the said Land Commission created under the Act of March 3, 1851, a claim for sixteen square leagues of land, of which the plaza in the City of Los Angeles was the alleged center. The petition set forth that by virtue of an ordinance and directions made by Governor Neve, Commandant-General of the Internal Provinces of the West, the Pueblo Nuestra Senora Reina de Los Angeles, the alleged predecessor of the petitioner, had been founded and instituted. And further representing that its claim to sixteen square leagues of land was made in virtue of the general laws of Spain, and particularly of an ordinance of His Majesty the King of Spain, providing for the establishment of the Town of Pitic in Sonora, and ordering that the provisions relative thereto should be followed in the foundation of any new pueblo. The petition further alleged that the lands had been granted to the pueblo as its common lands, in pursuance of the policy and object of the Spanish Government to encourage in California the increase of cattle and horses, and that as fruits of that policy, the settlers had

become, and were then, large stock owners, and needed said common lands for the pasturage of their herds. That thereafter, February 7, 1856, the said Land Commission confirmed the claim set up in the petition, as to four square leagues of the lands so claimed, but denied and rejected the claim as to the other twelve square leagues, and thereafter such proceedings were had as resulted in this action of the Commission becoming final. That later, on the 9th of August, in the year 1866, a patent was issued by the United States, under the hand of the President thereof, Andrew Johson, and delivered to the City, wherein it is recited that the claim of the City to the lands granted, was founded upon the Mexican grant to the said City, made on the 25th day of August, 1844, by Manual Micheltoreno, then Governor of the Department of the Californias; that the patent purported to grant and convey to the City of Los Angeles, the said four square leagues, describing the same by metes and bounds, but no reference was made therein, or in any of the proceedings, upon which the same was based, to the Los Angeles River, or to the waters of the Los Angeles River, either by express words or by implication, and the patent did not convey, nor purport to convey any of the said waters of the river.

It is thereupon further averred that the de-

fendant City claims the paramount right to the waters of the Los Angeles River and the river itself, by virtue of grants, laws, usages and customs of the Republic of Mexico and the Kingdom of Spain, made and in vogue prior to the cession of the territory embraced within the State of California, to the United States of America, under the Treaty of Guadalupe Hidalgo of February 2, 1848, and by virtue of certain acts of the Legislature of California, which are set out in the bill, and especially by virtue of an Act of the Legislature of said State, passed April 4, 1850, and which will be found in appellants' Abstract of the Record, [fols. 35 to 38 inclusive, pp. 13 and 14.]

The purport of this legislative act is, that all that tract of land included within the former pueblo as heretofore known and acknowledged, shall henceforth be known as the City of Los Angeles, and the said City is hereby declared to be incorporated according to the provisions of an Act of March 18, 1850. It is provided, however, that if such limits include more than four square miles, the Council shall, within three months after they are elected and qualified, fix, by ordinance, the limits of the City, not to include more than said quantity of land, and the boundaries so determined shall henceforth be the boundaries of the City. It further provides that

the corporation created by the act shall succeed to all the rights, claims and powers of the former pueblo, in regard to property, and shall be subject to all the liabilities incurred, and obligations created, by the ayuntamiento.

It is further averred that the City never procured confirmation of, or had ascertained or settled, under the said Act of Congress of March 3, 1851, any rights of said pueblo or of itself as the successor of such pueblo, in or to the waters of said Los Angeles River, or in and to the Los Angeles River itself, other than such as are implied without mention in the confirmation and patent of the lands herein before set out; that the City as successor to the pueblo, is not now the owner of any right or rights formerly owned by said Pueblo de Los Angeles, in the waters of the Los Angeles River, or the river itself, other than such as passed under the said grant of land confirmed to the defendant by said patent.

It is thereupon alleged that the Act of the Legislature of California, of April 4, 1850, and certain further acts of said Legislature, and certain proceedings, acts and charters of said defendant City—all of which are set forth in the bill—are a cloud upon the titles of the complainants to their said lands, and grievously affect

and hinder them in the use and enjoyment and sale thereof.

The course and direction of the Los Angeles River are set forth, showing that it runs through the several Ranchos, the lands of which are claimed by complainants, and thence partly through the City of Los Angeles, and that the Ranchos, and each of them are riparian to the stream, and that the several tracts of land of complainants are also riparian to the stream.

It is next alleged that underlying each and all of the several tracts of land belonging to the several complainants, are waters below the surface of the earth, which do not flow as a stream, but are oozing and percolating, and do not constitute any part of the waters of the Los Angeles River; that these waters, by virtue of the patents and mesne conveyances before alleged, belong to the several complainants, by reason of their several ownerships in the lands; that such waters in said lands are of great value to the owners, because by pumping, they can be brought to the surface and used for irrigation of valuable crops, which are thus produced upon the land, but which, without the waters, cannot be produced, and so the waters existing in the lands are necessary to the complainants in their ownership, use and cultivation thereof, for irrigation and for domestic uses.

It is then alleged that certain of the complainants have pumping plants upon their several tracts of lands, and are using the waters which they are pumping from their several lands, for domestic and irrigating purposes, thus producing valuable crops, which could not be produced without such use of the waters.

Then follow allegations that while in its petition to the Commission, for confirmation of its grant, the defendant neither made nor asserted any claims to the waters of the Los Angeles River or to the river itself, either by virtue of any express grant from the Spanish Government or from the Government of the Republic of Mexico, or in virtue of any policy of said Governments, or either of them, or of any customary law thereof, and while in confirming its said grant of the four square leagues of land, the Commission, in its finding and judgment, made no mention, finding or judgment in respect of said Los Angeles River, or its waters, or the waters of its tributaries, nevertheless, the defendant City and its agents have claimed in the past, and claim now, that it is the owner of the Los Angeles River and of all the waters of the river and of its tributaries, passing through the said Ranchos of complainants, and of all the waters of the river from its sources to the southern boundary of the City, and also of all the waters percolating

and existing in the lands of the complainants, as set forth in the bill; claiming the waters under the lands of the complainants, although the same do not constitute any stream, and are, strictly speaking, percolating waters only, and claiming that complainants have no right to pump the waters, because the same might ultimately have the effect of reducing the supply in the surface and subterranean river, although the waters under the complainants' several lands are percolating and do not flow by any definite or other channel in the surface waters of said river, and do not constitute any part of the surface flow of the river.

It is further averred that the City and its officers and agents assert and claim the right, whenever the water is needed by the City or its inhabitants within the present enlarged boundaries, to take and appropriate the same to its uses, at the same time denying the complainants' rights to any part of the surface water of the river, or the right to pump any of the percolating waters for use upon their own lands, or for domestic uses, except subordinate to the alleged paramount claim and right of the City and its inhabitants to take and use the same; and the City claims the right to prevent the complainants from the use of any part of the waters, and threatens and intends to file in the State Courts

of California, a complaint, and institute an action, to enjoin the complainants severally from using any part of the waters by them pumped from their several wells and used upon their several tracts of land.

The foregoing is in as brief form as it can be set forth,—the character of the rights, upon the one hand, of complainants, as they assert them under the titles derived from the grantees of the several Ranchos, and on the other hand, the character of the claim of the defendant, to the paramount title to the Los Angeles River and the waters thereof and to the waters in the lands of the complainants respectively, and indeed, to all the waters within the valley of the river, from its source or sources to the southern line of said City.

Certainly, in view of any premises as yet appearing, the claim of defendant cannot be regarded as anything less than astounding, exorbitant, unprecedented, and, outside of this single instance, we think, unheard of. It is a pretension so sweeping, and affecting so vitally a large population living in the valley traversed by this river and its waters, that it certainly should have a solid foundation in either law or equity, or in both.

It has been diligently sought to find out the grounds of this claim, and it is believed that

they are set forth in the bill here; and appear in appellants' Abstract of the Record, beginning at folio 56, p. 18, and ending at folio 87, p. 26.

As will be seen, the first ground of such claim rests upon a construction of the Treaty of Guadalupe Hidalgo, and upon a construction of the Act of the Congress of March 3, 1851, and especially upon such construction of sections 8, 11, 13 and 14, of said Act; which construction is to the effect and intent that whatever rights the laws, grants, customs and polity of the Spanish and Mexican Governments bestowed upon pueblos, the defendant City, as successor to the Pueblo de Los Angeles, especially in respect of the waters of the adjacent river and of the river itself, still possesses, although section 13 of said Act of the Congress provides that all lands, the claims to which have been finally rejected by the Commissioners, or which shall finally be decided to be invalid, by the District or the Supreme Court, and all lands, the claims to which shall not have been presented to the Commissioners within two years after the date of the Act, shall be deemed, held and considered as part of the public domain of the United States; and although said City in its petition to said Commission made no claim on account of any grant, or of any law, customary or statutory, or any public polity of either Government from which

said grant of any right to the said river and its waters could be inferred or derived, except such rights thereto as were incident to any and all grants upon water courses.

The second ground of said claim is alleged to be certain acts of the Legislature of the State of California, and certain ordinances and charters adopted by the defendant City, and approved and enacted by the said Legislature; that these legislative acts and the City's charters were passed, ordained and approved in pursuance of the erroneous construction of the Treaty of Guadalupe Hidalgo and of the aforesaid Act of the Congress of March 3, 1851, and especially in pursuance of such erroneous construction of the **said Eighth, Eleventh, Thirteenth and Fourteenth sections and of each of said sections of said Act, which erroneous construction is to the effect and intent set forth above.**

The acts of the Legislature are three in number. The first of these, so far as it is material to this cause, is set out from folio 64, p. 20, to Fol. 72, p. 22, of Appellants' Abstract of the Record. The other two are set out in their import, immediately following in said Abstract, (Fols. 73, 74 and 75, p. 23). These acts declare that there be "and hereby is granted to the said corporation, to be by it held, used and enjoyed in absolute ownership, the full, free and

exclusive right to all of the water flowing in the River of Los Angeles, at any point from its source or sources to the intersection of said river with the southern boundary of said City."

Then follows the declaration of the right of the City to exercise the powers incident to ownership over the waters of the river, but reserving from the operation of the grant of the water flowing in said river, "all vested private rights to the water flowing upon the surface or beneath it in the bed of said river." This Act was approved March 26, 1874.

On the first day of April, 1876, the Legislature enacted a further law, revising the said Act of 1874. By that act it assumed to grant to the defendant City, the same rights in the same terms as contained in the first act as quoted above.

On the 30th day of March, 1878, a further act of the Legislature was approved. By its section 1 of Article II, the Legislature, in the same terms as employed in the two previous acts, again assumed and purported to grant to defendant City, the Los Angeles River, with the same powers to control it; omitting, however, the exceptions contained in said prior acts in favor of vested private rights in the waters of the river.

The ordinances and charters ordained, enacted and adopted by said City and approved by the said Legislature of the State, are,—

First: The charter prepared and proposed by a Board of Freeholders, elected in the year 1888, in pursuance of constitutional provisions of the State, which charter was submitted to the people of the City and by them adopted, and which was thereafter submitted to the Legislature of the State, as in the Constitution provided, and was, by the said Legislature, duly approved on the 31st day of January, 1889, as the charter of defendant City.

By section 190 of Article XVIII of the said charter, it is declared: "The City of Los Angeles shall continue in the ownership and enjoyment of all rights to the water of the River Los Angeles, heretofore vested in it, its predecessor or predecessors, including the Pueblo of Los Angeles, and is hereby declared to have the full, free, and exclusive right to all the water flowing in the said river at any point from its source or sources to the intersection of said river with the southern boundary of said City, and also the ownership of, and the right to develop, economize, control, use, and utilize, all waters flowing beneath the surface in the bed of said river at any point or points between the points of termini above named."

Second: In the year 1902, acting under the same provision of the Constitution above referr-

ed to, another body of Freeholders was elected by the Electors of the City, to prepare and propose amendments to the said charter adopted as herein last above set forth, and that Board did prepare and propose certain amendments which were submitted to the Electors of the City and were voted upon at a general municipal election held according to law, and said amendments were duly adopted, more than three-fifths of the qualified Electors voting, having voted for the same. These amendments were submitted to the Legislature of the State, in pursuance of the constitutional provision upon that subject, and were, by the joint resolution of the Senate and Assembly, duly enacted and passed and duly approved, on the 30th day of January, 1903, and thereupon became, and ever since have been, in full force and effect, as a part of the charter of defendant City.

That section 190, Article XVIII, in the language hereinabove quoted, was again re-enacted by the said City and approved, in manner aforesaid, by the Legislature of the State.

This charter created, and there has been instituted under it, a Board or Department known and named "Water Department," with power to manage and control all the waters, water rights, water-bearing lands, etc., belonging to the City. (Appellants' Abstract of the Record Fols. 80 to 87, pp. 24 to 26.)

The bill proceeds to charge that under these acts of the Legislature and these charters and amendments adopted by the City and approved and enacted by the Legislature of the State, the defendant City has asserted, does assert, and has assumed the right to control the river and its tributaries and the waters of the valley, and has, through its agencies, asserted and exercised the right and authority to obstruct ditches and other conduits erected and maintained by owners of land in the valley above the City, and so to prevent the use of the water of the river by the inhabitants of the valley, in irrigating the lands belonging to the complainants herein and others; that these laws and charters and the assertion and exercise of the power and authority aforesaid, over the waters of the valley, have resulted in the destruction of the values of complainants' lands, and each part and parcel thereof. (Folio. 87, p. 26 to fol. 90, p. 27 of Appellants' Abstract of the Record.)

Complainants submit and aver that said acts of the Legislature and the charters of the City are in violation of the Fourteenth Amendment of the Constitution of the United States, in that they deprive complainants, severally, of their property without due process of law, and attempt

to grant to, and confer upon, the City, the rights and title thereto.

And they allege and submit that said acts of the Legislature and ordinances and charters impair the obligations of the several contracts made through and by the several patents executed by the United States to the several predecessors in title of the complainants, and that the said several acts of the Legislature and of the defendant City, including the charters of the City, under which the City has asserted the right and authority to take control and possession of the river and its waters and its tributaries, and has interfered with the rightful use by the complainants of the lands severally held and owned by them and of the waters therein and of the waters of the river, are in violation of section 1979, Title XXIV of the Revised Statutes of the United States, in that the said defendant City, under color of said Statutes of the State of California, and under color of said charter provisions and of the ordinances aforesaid, has subjected, and caused to be subjected, the complainants to the deprivation of their property rights, privileges and immunities secured to them by the Constitution and laws of the United States. (Appellants' Abstract of the Record fol. 90, p. 27 to fol. 95, p. 28.)

It is then alleged that the City has never pro-

fessed to hold the lands confirmed and granted to it, in trust, but has claimed such lands as belonging to it as a municipal corporation, in its own unlimited right, to hold and dispose of the same as any other private proprietor. (Appellants' Abstract of the Record, fol. 96, p. 28 to fol. 99, p. 29.)

The construction in said bill shown to have been placed upon the Act of the Congress of the United States of March 3, 1851, and especially upon certain sections thereof, is alleged and shown to be contrary to justice and equity and to a right and proper construction thereof, which right and proper construction, complainants submit and allege, is that, upon whatever the claimant to title to lands derived from Spain or Mexico, may have relied, whether upon an express grant or upon a grant implied by the general polity, or by the customary law of the Spanish or Mexican Governments, such claimant must have presented his petition to the said Land Commission, setting forth the ground of his claim, and the confirmation of such claim must have proceeded upon such ground, and that, therefore, the construction of the Act of March 3, 1851, insisted upon by defendant is erroneous, and that a sound and reasonable construction of said act will secure the complainants in their rights as riparians to the waters of the said river,

as well as to the waters within their lands, even though it be true that such latter waters, because they do ultimately find their way by subterranean channels to the said river, are waters of such river. (Appellants' Abstract of the Record, fol. 100, p. 29 to fol. 103, p. 30.)

The rapid growth of the City is set forth, showing, that the present population is 150,000 souls, and that the boundaries of the City have been extended far beyond the limits of the four square leagues granted by the United States to it, and now embrace 28,000 acres of land, and forty-three square miles of territory; and that there is threatened a still farther extension of the boundaries of the City, and that the City has claimed, and does claim, the right to take the waters of the Los Angeles River and of its tributaries and the waters in the lands of complainants, and appropriate them to the uses of the inhabitants of said City, as well those occupying the territory annexed and taken into the said City, as aforesaid, as those occupying the original four leagues confirmed to the City, as aforsaid, and showing that the City further claims that the complainants, and all others similarly situated, have no right to such waters, or any of them, as against the City and its inhabitants, whenever the City shall determine that it needs such waters; that the present, or any use of such waters

by complainants, is at the sufference of the City, and that the City may prohibit their use at any time, and is threatening to institute suits against complainants, for the purpose of enforcing and effectuating such claims.

That the said claims of the City to the exclusive paramount title of the waters, are without right, and that the same, and the threat the City is making to institute actions, and the dominion and control which it has exercised over the river and its waters; as hereinbefore set forth, and the said several acts of the Legislature of California, and said charters of the City, purporting to confer upon it the title of the river and its waters, and declaraing and asserting that such title to the river and its waters is vested in the City as successor to the Mexican pueblo, have and do cast a cloud upon the several titles of the complainants in said lands, and have, in large measure, destroyed the market value of their lands and rendered them unsalable at other than ruincusly low prices, for the reason that the waters in the lands, and the right to use the same, and the right as riparians thereto, to use the waters of the river in irrigating their lands and for other reasonable uses, constitute the principal value of their lands, and are worth to them from $300 to $600 an acre; that the waters in the lands of complainants are of the aggregate value of

more than one million dollars; that the claim of the City to the paramount title to the waters of the river has diminished, in fact, destroyed the market value of their lands; that the value of the matter in dispute, as set forth between complainants and defendant City, and between each of said complainants and said defendant City, exceeds, exclusive of interest and costs, the sum of two thousand dollars. (Appellants' Abstract of the Record, folios 104, p. 30 to folios 115, p. 33.)

The prayers of the bill are set forth in Appellants' Abstract of the Record, folios 116, p. 33 to folios 126, p. 36.

It will be seen that these prayers are for the removal of clouds from title, such clouds being specifically set forth, and do not ask or seek a decree quieting complainants' titles generally.

Thus it is made clear, from the bill,—

First: That the grantees, from the former Governments, of the three Ranchos, or their heirs or other successors, duly presented to the Land Commission instituted under the Act of Congress of March 3, 1851, their several claims, to have their titles to the same confirmed, and that said titles were severally confirmed.

Second: That in pursuance of such judgment of confirmation, and of the said act of Congress, the Ranchos were surveyed and defined, and

thereupon, in further pursuance of such judgments of confirmation and of said act, the Government of the United States, through its proper officer, the President, executed to said confirmees severally, deeds granting the said Ranchos respectively to them.

What measure of title did these instruments vest in the several grantees?

In Middleton v. Pritchard, 3 Scammon, 510, 520, as quoted and approved by this Court, in Grand Rapids & Indiana R. R. Co. v. Butler, 159 U. S. 92, it is said:

> "Where the government has not reserved any right or interest that might pass by the grant, nor done any act showing any intention of reservation, such as platting or surveying, we must construe its grant most favorably for the grantee, and that it intended all that might pass by it."

And, again, on page 93, it is said:

> "The United States have not repealed the common law as to the interpretation of their own grants, nor explained what interpretation or limitation should be given to, or imposed upon the terms of the ordinary conveyances which they use, except in a few special instances; but these are left to the principles of law, and rules adopted by each local government, where the land may lie. We have adopted the common law, and must, therefore, apply its principles to the interpretation of their grant."

This view has been generally adopted, and, as we understand, fully approved by this Court.

On the 13th day of April, 1850, the Legislature of California adopted "as the rule of decision in all the courts of the State, the common law of England," and the Supreme Court of that State, in commenting upon that act, in Lux v Haggin, 69 Cal. 255, say:

> "The Statute of April 13, 1850, adopts as the rule of decision in all of the courts of this State, the common law of England, not the civil law, nor the 'ancient common law' of the civilians, nor the Mexican law."

In the same case the Court further say:

> "That a grant of public land of the United States carries with it the common law rights to an unnavigable stream thereon, unless the waters are expressly or impliedly reserved by the terms of the patent or of the statute granting the land, or unless they are reserved by the congressional legislation authorizing the patent."

As is made clear by the averments of the bill, the patents executed by the United States.—as well that to the City as those to the confirmees of the Ranchos,—purported to grant to each of the grantees an unlimited title in fee. No question raised by the bill can, therefore, be settled by reference to, or construction of, the patents alone.

But notwithstanding such effect of the grants, it is alleged and shown that the defendant City

claims much more,—claims that it owns a riv
traversing an extensive valley, and only at len
touching, on its way to the sea, some portion
the lands embraced within its grant. And it pr
dicates this claim, as alleged in the bill,
grants, usages and laws of a government, or
governments, other than that of which it hol
the only title, or, rather, muniment of title, whi
it has; governments alien to it, and to which,
is alien. In short, the defendant, though it is
American city, the creature of a law enacted
a government instituted under the Constitutio
of the United States, and in defiance and r
pudiation of Mexican sovereignty and dominio
is asserting that under the Treaty of Guadalu
Hidalgo, made long before it came into bein
certain rights of property,—corporeal heredit
ments,—were secured to it. The averments
the bill in this respect might have seemed i
credible, were not that very claim re-asserte
in the answer filed in this suit, for, surely, suc
claim is unique in the judicial annals of this cou
try, as we hope presently to show.

Seeing, then, that defendant derived its ver
existence, not from Spain nor from Mexico, bu
from an American State organized and existin
under the constitution and polity of the Unite
States, what is the ground for its pretensions i
this behalf?

The State of California, by an Act of its Legislature of April 4, 1850, declared:

> "That all that tract of land included within the limits of the Pueblo de Los Angeles, as heretofore known and acknowledged, shall henceforth be known as the City of Los Angeles;"

If the act had ended here, it would have amounted to no more than a change of name; and a municipality being a mere creature of the sovereign authority, a purely artificial being, no doubt its name may be changed by that authority. But the act did not stop with that. It proceeds:

> "and the said City is hereby declared to be incorporated, according to the provisions of an Act entitled, "AN ACT TO PROVIDE FOR THE INCORPORATION OF CITIES,' approved March 18, 1850."

Nor does the act end here. Not only was the old Pueblo to be abolished, and a new and an American city created, the extent of its territory, and of its territorial jurisdiction were to be changed and limited. Accordingly, it was declared that the new municipality was to be confined in its boundaries, within four square miles; and if it should be found that the former Pueblo included more than four square miles, the Council, thereafter to be elected, was charged with the duty, within three months after its election and qualification, to fix, by ordinance, such limits

so as not to include any lands in excess of such four square miles, and the boundaries so to be determined, it was declared, should henceforth be the boundaries of the new city.

Section 2 fixed the number of Councilmen at seven, and appointed the first election of officers for the first Monday of the ensuing May. Then follows:

> "Section 3. The corporation created by this act shall succeed to all the rights, claims and powers of the Pueblo de Los Angeles, in regard to property and shall be subject to all the liabilities incurred, and obligations created, by the ayuntamiento of said Pueblo."

We believe it is not disputed, that the municipal corporation thus created, and which the Legislature named "The City of Los Angeles," was a new body politic and corporate, and that the Mexican municipality called in this act the "Pueblo de Los Angeles," passed away forever. But it is insisted that immediately thereupon, and because of the provisions of the third section, the new city became invested of all the property rights of the old pueblo; among which, was whatever title to lands, rivers and waters the pueblo held of Spain and Mexico, or of either.

It has seemed to us, that many of the fallacious and false notions in respect of defendant City's rights to the Los Angeles River and to its waters,

have their source in this erroneous view of the effect of the act above set forth. We do not question that the Legislature had the power to confer upon the new city any public personal property which had belonged to the old pueblo at its dissolution, under said act, but it is doubtful if this act could have served, or was intended to serve, even as an enabling act, under which it might acquire any property beyond such as might have been necessary for municipal purposes and administration. Without authority conferred by the sovereign, a municipal corporation may not acquire and hold lands, or other property ,not necessary and suitable for such purposes.

That the act now under consideration had the effect to confer upon, or vest in, the new city any title to lands claimed to have been held by the old pueblo of Spain or Mexico, we deny as a thing impossible. A sufficient ground for this denial would be the obvious one, that no title existed to any lands, in the pueblo.

It has been so often decided by this Court, as well as by the Court of California, that at the time of the cession of the territory, the Pueblo de Los Angeles had no title to the lands which defendant City afterwards claimed, and that the most it did have was a mere inchoate right, which was in no measure binding upon the sovereign,

we shall not stay at this point to cite authority upon the subject.

A Spanish or Mexican pueblo was simply a mode of government, created by the sovereign for governmental purposes. Any property it may have owned, or held, was, therefore, public property, held for public uses and purposes.

No principle of international law is better understood or more thoroughly settled than that in case of the conquest by one nation of the territory, or a part of the territory of another, all the public property, or the property of a quasi-public character, that is, of such character as that the State may properly apply it to a public use, in such territory, at once becomes the property of the conqueror. The law of nations imposes upon the conquering State no obligation toward the losing State, or toward the inhabitants of the conquered territory, in respect of such property, nor does the conquering State enter into any treaty obligations as to what it will do with it. It has the absolute right, unhindered by any law of nations, to do as it may see fit, with such property, and it would be an act of self-stultification, for the conquering nation to enter into any convention with the conquered, as to what it would do with such public property, unless, indeed, such convention respected the surrender,

by the grace of the conqueror, back to the losing nation, of such property.

The absolute dominion, unhampered by any custom or law of nations, of a conquering nation, over public property found in the conquered territory, is universally recognized and asserted, and has been asserted in the adjudications of this Court.

New Orleans v. Steamship Co., 20 Wall. 387;

Cross v. Harrison, 16 How. 164.

That what are called pueblo lands, belong to the category of public property, or property under the dominion of the sovereign, has been repeatedly held by this Court.

United States v. Pico, 5 Wall. 536;

Griscar v. McDowell, 6 Wall. 363.

Such lands were not the property of the pueblo, in any sense, until they were ascertained and measured off to it, and if, at the time of the conquest, such lands had not been so ascertained and assigned, or if they had been so ascertained and assigned, but had not fallen into private ownership, the Government of the United States had a perfect right, affected by no law of nations, to appropriate such lands to any purpose it might select; or it might have treated them simply as a part of the public domain, to be disposed of under the general regulations upon that sub-

ject: and, as we shall presently see, no obligation was entered into by the Treaty of Guadalupe Hidalgo, limiting these rights and powers.

It will be seen that when the Commissioners of the two nations came to write that Treaty, the subject of what disposition should be made of pueblos, or other public property, is nowhere dealt with; nor is there the slightest allusion to it. The one obligation entered into by this nation in respect of property rights within the conquered and ceded territory, relates to the private property rights of "Mexicans." Even the use of the word "person" or "persons" was shunned as being, no doubt, too flexible,—too large,—in its possible application. They use a designation which could not be mistaken as to its meaning, and which could be applied to natural persons only: "Mexican" and "Mexicans." Articles VIII and IX alone deal with the obligations imposed upon this nation in that respect. Mexicans established in the ceded territory, were to be entitled to continue there, or to remove at any time, to the Mexican Republic, retaining the property which they possessed, or if they disposed of it, they were to have the right of removing its proceeds wherever they went.

Such language clearly could not have embraced,, or been intended to embrace, pueblos. Again, those Mexicans who preferred to remain

in the territory, might either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States; but they were obliged to elect which they would do within a year from the date of the ratification of the Treaty, and those remaining after the expiration of that period without having declared their intention, were to be deemed to have elected to become citizens of the United States.

Manifestly these provisions could not have been meant to embrace pueblos.

The language of Article IX is equally exclusive of any idea or notion that pueblos, or any other artificial person, were meant to be included. And there is certainly nowhere else in the Treaty any provision or stipulation which can be thought to refer to pueblos or to their rights.

Yet it will be seen that the defendant, in its answer here, admits that it rests its claim to the Los Angeles River and the waters thereof, including the waters in the lands of complainants in this suit, in part upon the Treaty of Guadalupe Hidalgo, and upon what the pleader avers is the manifest, undoubted and indisputable meaning thereof, namely, that the rights of pueblos in the present State of California, were intended to be protected by said Treaty, as well as the rights of private individuals. (Appellants' Abstract of the Record, folios 147 and 148, p. 41.)

These admissions and averments are in answer to the charge in the bill, that the City's claim to the river and its waters and the waters in complainants' lands, is rested in part upon a construction of said Treaty, which construction, and that alleged to be placed upon the Act of Congress of March 3, 1851, are set forth with particularity. (Appellants' Abstract of the Record, folios 56 *et seq.*, pp. 18 and 19.)

Whether such admissions in defendant's answer to the averments of the bill in this respect, will be considered as strengthening such averments of the bill, must depend upon whether this Court will look beyond the bill in determining whether a federal question is presented there; that is, in determining the question of jurisdiction; and if so, whether they will do so only to see if there be any matter in the answer defeating such jurisdiction. In either event, it seems clear that the Treaty of Guadalupe Hidalgo is fairly drawn into this cause, and whether the averments of the bill alone, or such averments and the admissions of the answer, be considered, the construction of that instrument must be had in order to a proper determination of the controversy here.

If the property rights and interests of pueblos were secured by the Treaty, it would seem, as we have already seen, that this nation, in making the

Treaty, took upon itself obligations not imposed by the law of nations, and certainly, unusual to be assumed by a conquering power. Whether such obligation was assumed, is a question which has not, so far as we are advised, been before this Court hitherto.

II.

Of the Act of March 3, 1851, and its Construction.

The claim of the City to the river, to its waters and to the waters in the lands of complainants, is shown to be based upon an erroneous construction of the above-mentioned Act. The averments of the bill on this subject are those showing—

(*a*). What the City's petition to the Board of Land Commissioners contained, and that it contained no claim for the river or its waters. (Appellants' Abstract, folios 22, p. 10, to folios 27, p. 11.)

(*b*). That the Commission rejected the City's claim as to twelve leagues, and confirmed it as to four leagues only, and that neither the river nor its waters are mentioned, or in any way referred to, in the proceedings or judgment, and that the patent issued by the United States, in no manner refers to the river or its waters, but was for four square leagues of land only. (Appellants' Abstract, folios 27 to 31, pp. 11 and 12.)

(*c*). That the City claims the paramount right to the waters of the river and to the river itself, under grants, etc., from Mexico and Spain, made prior to the cession of the territory to the United States. (Appellants' Abstract, folios 33 and 34, p. 13.)

(*d*). More explicitly, that the City never procured any confirmation of any claim for the river or its waters. (Appellants' Abstract, folios 38 and 39, p. 14.)

(*e*). That nothwithstanding the City has not procured any confirmation of its claim to the river or its waters, it nevertheless still claims the same and all the waters percolating in the lands of complainants.

(*f*). That the City rests its claim in part, upon a certain erroneous construction of the said Act of Congress, and especially of certain sections thereof, and the intent and effect of such construction are set forth. (Appellants' Abstract, folio 56, p. 18, to folio 60, p. 19.)

(*g*). That said construction of the Act by the City is contrary to justice and equity, and to a right and proper construction thereof, and setting forth the alleged right and proper construction. (Appellants' Abstract, folio 100, p. 29, to folio 103, p. 30.)

It will be seen that the construction insisted upon by the City and that urged by the complain-

ants, are in sharp and obvious antagonism; that if the construction contended for by defendant be allowed, it would have the right to show— if it could—a title in the ancient pueblo, and its own succession thereto, whatever might have been the mode by which the pueblo had acquired such title, and without any reference whatever to the Act of Congress aforesaid, or to events falling out after the conquest of the country by the United States. In short, under such construction, defendant might deprive complainants of their property, upon an abscure custom or unwritten law of Spain or of Mexico; though there has been no trace of the existence of such custom visible or ascertainable, to put the purchasers of the lands of the valley upon notice or inquiry. On the other hand, if the construction contended for by complainants be allowed, the rights of these complainants and of all parties owning lands in California, have been adjudicated and put at rest long ago.

It has always seemed to us extremely doubtful if the Act of March 3, 1851, was intended to embrace pueblos as claimants who might present their claims to the Commission for confirmation. The title of the law,—"An Act to Settle Private Land Claims," etc.,—would seem to exclude municipal corporations; the language, too, of section 8,—"That each and every *person* claiming lands,"

etc.,—in view of the title, suggests the same thought. But a still more powerful consideration in support of this view, is the one already referred to, namely, that such lands were public property, and vested at once in the new sovereign. There was, therefore, no obligation, treaty or other, resting upon this nation to prescribe any mode by which such pueblo, or its successor, might acquire title to such lands. If such provision was made, or if the Government did, at any time, bestow title upon such pueblo, it was, as this Court has declared, an act of grace, and not one of duty or obligation.

United States v. Santa Fe, 165 U. S., 675;
41 L. Ed. at p. 884.

It might bestow its public lands upon such municipal corporation, we suppose, but in the instances it has done so, certainly the language of the instrument making the grant should be the measure of such grant.

If we are right in these views, the fact that such grant was made upon, and following a judgment of confirmation of title in the City of Los Angeles, to the four square leagues of land, the instrument of it would none the less limit the subject-matter of the grant as such instruments do in other cases.

But it is true that what may be called a prac-

tical construction of the Act of 1851, placed upon it by the Commission and by the District Courts, and, perhaps, finally by this Court, was, that such pueblos might present their claims the same as natural persons; though we are not aware of any case in which the question came directly in judgment.

Accordingly we have proceeded in this case as if the law had expressly embraced pueblos, and shall so proceed here, though we respectfully submit that the consideration suggested respecting the position of such claims and claimants should not be disregarded in considering the matter now in hand.

What is there in the law of March 3, 1851, or in any other law, or usage, of this nation, to justify the exorbitant claim asserted by the defendant? A claim which if allowed, annuls and renders a dead-letter said act. For not only does the claim embrace property—corporeal hereditaments—in short, lands, not embraced in the claim made before the Commission, nor in the findings and judgment of that Court, nor in the instrument of grant executed by the Uited States to the City, but extends to, and embraces rights in lands whose claimants filed their claims before said Commission, which claims were confirmed, and are clearly embraced within the grants executed by the United States to said claimants re-

spectively; and complainants here are successors in title of such grantees.

Complainants have insisted that the statute of March 3, 1851, obliged every claimant of lands, or of an interest in lands, to present his claim to the tribunal appointed, showing the source, mode and measure of the title he claimed, and that if he failed to do so, no matter how perfect, how consummate, may have been such title under the former Government of Spain or Mexico, his claim and all rights under it were lost, forever and irretrievably. This view was the one adopted by this Court from the beginning. A multitude of cases have come here, in one form or another, involving this question, and always, without variableness or the shadow of turning, this Court have said the law was so and not otherwise.

United States v. Fossatt, 21 How. 445, 447;

Fremont v. United States, 17 How. 542, 553;

United States v. Castilero, 2 Black 17, 158;

Newhall v. Sanger, 92 U. S. 761, 764;

More v. Steinbach, 127 U. S. 70, 81;

Botiller v. Dominguez, 130 Cal. 238;

Barker v. Harvey, 181 U. S. 481,

The Supreme Court of California held a different view and adhered to it with considerable tenacity; the view, that a title, perfect at the date of the cession of the territory, needed not to be presented.

In the cases of Phelan v. Poyoreno, 74 Cal. 448, and Dominguez v. Botiller, 74 Cal. 457, decided in 1888, and which latter case was reversed here, that Court adhered to the ruling made twenty-five years before, in Minturn v. Brower, 24 Cal. 644. Indeed, traces of the doctrines decided in the last-named case, are to be found in cases decided by that Court since their judgment in Dominguez v. Botiller, *supra,* was reversed by this Court.

In the case of Harvey v. Barker, 126 Cal., p. 262, a majority of that Court did, finally, adopt and follow the decisions of this Court upon this question, but the Chief Justice and two of the Associate Justices, dissented, and based such dissent upon the case of Byrne v. Alas, 74 Cal. 628, which differs little from the doctrines of the cases of Phelan v. Poyoreno, *supra,* and Minturn v. Brower, *supra.* And we think we are entirely justified in the opinion that the claims of defendant City, if they had not their origin in these decisions, have been fostered by, and have grown into their present enormous proportions as a result of them.

We suppose, however, that it will no longer be contended that titles to lands in California, dependent upon Spanish or Mexican grants, can have any validity, unless they were submitted to, and confirmed by the Commission provided for that pudpose under the Act of March 3, 1851; or, if rejected by that Commission, were confirmed by the District Court or by this Court.

But it has been insisted that the paramount title of the City to the Los Angeles River and to the waters of the river, including the percolating waters in the lands of complainants, is a good and valid title; although it is conceded that no claim therefor was ever filed by the City or confirmed to it under said Act.

The ground of this contention has never been made clear hitherto. The most that complainants have been able to make of the premises advanced in support of the claim, is that the river and its waters are attached to the City in some sort,—by some ligament,—not defined. It is true we have been told by City's counsel, when pressed for a definition of the City's claim, that the word "appurtenances" found, it is believed, in every patent issued by the United States, is sufficient to carry a river and its waters as an incident to the grant of the four leagues of land.

Only one thing has been made certain, and that is the claim, that the ancient pueblo had derived,

prior to the cession of this territory from Spain or Mexico, or from both, such right to the river and its waters as entitled the City, as successor of the pueblo, to the absolute dominion and control and to the paramount ownership thereof, and that these rights so derived from Spain and Mexico, one or both, by the ancient pueblo, have survived the mutations of time and government, the changes of sovereignty, and in defiance of the limitations of the law of the new sovereign, they still exist in all their original and much-added vigor.

This contention, as shown and set forth in the bill, resting in part upon a construction of the Act of March 3, 1851, draws into the cause that act and requires its construction in a case of a different class from that to which the other cases involving such construction belong. And, if defendant's answer may be looked to in this connection, it will, be seen that defendant admits the averments of the bill in this respect. (Appellants' Abstract, folio 135, et seq. p. 38, and folios 147-8-9-50-51, pp. 41 and 42.)

When hard-pressed to point out the mode of the City's title, counsel have said, the river, under Spanish and Mexican laws, custom or usage, was an appurtenance to the pueblo lands, or, perhaps, to the pueblo itself, and, as whoever acquires lands to which a water right is appurten-

ant, acquires such water right, the conveyance of the land by the United States to the City carried the river with it.

While this proposition, it is believed, is not very important as affecting the present case, we submit it is not the law without modifications and limitations, not necessary to enter upon here.

The claim of the City is not of a right appurtenant. Indeed, it belongs to no category familiar to our system of jurisprudence. It is, in fact, referred for its origin to the laws, customs or usages of the former sovereign or sovereigns, and still survives not by virtue, but in spite, of the laws, customs and usages of the present sovereign

It is admitted, since it cannot be any longer denied, even under the decisions of the Court of California, that the law of Congress enacted to settle private land claims in California, obliged all other claimants, whatever the nature, origin, grounds, or mode of the title asserted as derived from Spain or Mexico, and however perfect such title at the date of the change of flags may have been, to present their claims to the tribunal provided, and to prove to its satisfaction, such title, and failing in this, the claim was lost, and the new sovereign might and did make such disposition of the lands embraced in it, as it pleased. But here we have a claimant which, as we have

shown, it mattered not how clearly it might have proved its title under the former sovereign to have been, had no right, under any treaty, treaty-stipulation, stipulation, or under the law of nations, or under any principle of morals, to demand confirmation of its claim or title, from the new sovereign. If such sovereign did confirm or grant to such claimant, title to any land, it did it of its grace, as this Court has expressly decided in United States v. Santa Fe, *supra*. Of its grace, the sovereign did hear defendant's claim. A rather excessive one in the beginning, as it turned out—a claim for sixteen square leagues of land, reaching from mountains to sea—and did as to one-fourth thereof, that is, as to four square leagues, confirm defendant's title thereto But let it be noted, the confirmation of the claim and the grant of title were of four square leagues of *land,* whose metes were definitely fixed by surveyor's chain, and whose bounds were set and marked; and because to have given it the entire four square leagues, would have cut into one of the Ranchos in which complainants' lands in part lie, the body of land actually surveyed and set off to the City, as we are advised by defendant's answer (Tr. of Record, p. 48,) fell short of that quantity by some hundreds of acres.

And here another and still more important fact should be borne in mind: It is admitted on all sides, that the innavigable streams and their waters, in the ceded territory, belonged to the sovereign. Pueblo lands being, as this Court has often said, held for public purposes, likewise belonged to the sovereign, and were subject in their tenure and disposition, until they fell into private ownership, to the will of such sovereign. The claim for pueblo lands manifestly, therefore, were not of the same category as claims by natural persons. Such claims for pueblo lands by pueblos, or their successors, were claims for public lands—for lands which had always been public. They had belonged to the crown of Spain so long as that Kingdom remained sovereign in those provinces, and to the Republic of Mexico after, until their cession to the United States, when they passed, as we have seen, to the sovereign proprietorship of this nation. Not so, the lands embraced in the private claims of natural persons. True, such claimants must have their titles confirmed, but when confirmed, the effect of the adjudication was, to declare a previously existing title. In such case there is propriety in saying that the patent of the United States issued to a confirmee is of the nature of a quit-claim; (albeit, without it, the claimant would have no title, and the extent of his title is absolutely measured by

such patent.) But the patent executed to a pueblo was not confirmatory of a former title; for there had existed no former title, nor any obligation upon any sovereign, for the time being, to bestow one. A conveyance, therefore, by the United States, to a California city, which had taken the place as a governmental agency of the former Mexican pueblo, was the granting and bestowment of an *original* title, and was an act of grace —of free gift—having its roots and origin in no treaty, legal, or moral, obligation.

In view of this indubitable state of facts and law, the claim of defendant, that it became, by the proceedings and grant mentioned—or if not thereby—then by virtue of some Spanish or Mexican law, custom, or usage, seized of a title to a river which takes its rise far away in the mountains and traverses a valley many miles, through ranchos comprising many thousand acres of land, and only at length skirting small parts of the lands embraced in the City's former holdings, barely touching the hem of its garment, as it were, seems startling, and is certainly sufficiently novel to stir the wonder, if not to challenge the credulity of the conservative American mind, whether judicial or lay.

A river is as much a corporeal hereditament as a body of dry land, and is as susceptible of ascertainment, location and segregation. Its metes

and bounds are no more dfficult to fix by the surveyor's instruments. If a "Mexican" had been granted a river by the Mexican Government, he might, we will assume, have filed and proved his claim, and have had his patent. Its survey would have presented no difficulty, and it could and would, no doubt, have been granted *eo nomine*.

But defendant took no steps to have its title ascertained and adjudicated, and now says, that it owns the river and its waters, perhaps, as an appurtenance, but that in any and all events, it does own them. Nay, more, and that, in virtue of such ownership, it has the right to prevent these complainants whose lands were confirmed to their predecessors in title and conveyed in fee by the United States, from pumping the percolating waters out of their lands, to irrigate their crops, because such percolating waters, if left in the lands, will in the course of time, reach and supply its river.

Other municipalities in the United States similarly situated, if they need the waters in other people's lands, must proceed to condemn and pay for them—a fairly just way, it has been esteemed by mankind in general, in which to come by another's property, if it be for public uses. But this defendant asserts, that despite the judgments of American courts instituted by the American Con-

gress, declaring these lands to be the property of complainants, and despite the solemn grants of them executed by this Government, in performance of its treaty obligations, it, nevertheless, as successor of the former pueblo and of its property under the statutes of California, is entitled to this river and to the waters, from the moment they fall from the clouds upon the surface of complainants' lands, because of some custom, usage, law or royal ordinance of Spain or of some such law or custom or usage of the Republic of Mexico, under which the pueblo became possessed of the right and title of the river.

What the law, the usage, the custom, or the muniment, of a grant is that is so relied upon, no man—judge, lawyer or layman—has ever hitherto pointed out.

Complainants deny there exists, or ever has existed any such law, custom, ordinance, usage, or grant; though whether there was such, is no longer a matter of moment, however important such usage, custom or law might have been as supporting a claim before the Land Commission. That was their "day in court," and they can have no other for any purpose of establishing, buttressing or in any way aiding title now. They are *functus officio,* and belong to the catacombs.

There perhaps was under the Spanish *regime,* and to a limited extent, under the Mexican, some

regulation for the establishment of pueblos, and for the allotment of lands and waters to their inhabitants; but the pueblo had no title in the stream, and if any in the land was at any time conferred upon it, it was a title in trust for the use and benefit of the inhabitants. The City of Los Angeles never has had, nor pretended to exercise one single function of a pueblo in this respect. From the beginning of its existence, it has been simply an American city, exercising the functions of such city. The lands bestowed upon it by the United States, it held, and has sold most of them, as any other private proprietor holds and disposes of his land. It has sold the lands, in large part, but by some mysterious, suppositious law or custom, exotic here, and alien to our American system of laws, *it still owns the appurtenance.*—Such, reduced to its simplest terms, appears to be the defendant's claim to the Los Angeles River.

But we submit, that the suggestion that the river ever was, under Spanish or Mexican *regime,* an appurtenance to the pueblo, finds no support in any law or usage pointed out by defendant, or, after diligent search, found by us. It certainly cannot soundly be contended, that under our American system of laws, such relation could exist between a river which, for most part, is distant from the land, and such land.

It may be that a right to take a part of the waters of a stream is but an easement, but even that without much more, would not make it an easement appurtenant to the lands on which the waters were used. But whoever owns all the waters of a river, or of a lake, or of a pond, owns the ground which supports them. Such ownership is of a corporeal hereditament, and would no more pass to a grantee of a particular parcel of land than would another parcel of land not mentioned. In Wilkinson v. Proud, 11 Meesom and Welsby, p. 33, the distinction here suggested is illustrated. It is said there: "A right to take coal from under the land of another is an incorporeal hereditament or a privilege, but the right to take all the coal from under the land of another is a corporeal hereditament and not a privilege."

Doe d. Hanley v. Wood, 2 Bandald, p. 724.

It has been well settled in California that ownership in water is an ownership in real property. Accordingly, while it has been expressly decided by the Supreme Court of that State, that an action to quiet title to personal property will not lie (Fudickar v. East Riverside Irr. Dist., 109 Cal. 29,) actions to quiet title to water are common, and are constantly recognized as proper. The same averments in respect of title in the plaintiff, and the adverse claim of the defendant, that are

held sufficient under Section 738, C. C. P., in action to quiet title to lands are employed and approved, in actions to quiet title to water. This is true even when the action in the one case is to quiet title to a water right or easement. Where the action is to quiet title to a stream and all its waters, against an adverse claim, or where it is brought against such claimant to remove the cloud which the assertion of such claim casts upon the title, the action cannot but be regarded as one to remove cloud from title to real property.

In further support of the proposition, that defendant City's claim of the title to the river, is a claim of title to land, within the meaning and contemplation of the Act of Congress of March 3, 1851, we cite—

Kinney on Irrigation, p. 460;

Doyle v. San Diego L. & T. Co., 46 Fed. R., 709;

Lux v. Haggin, 69 Cal. 255 at 339, 340;

Vansickle v. Haines, 7 Nev. 226;

Pope v. Kinman, 54 Cal. 3;

Fudickar v. East Riverside Irr. D[illegible] Cal. 29.

III.

Of the acts of the legislature of California, and the cloud cast upon complainants' titles thereby.

These acts, including defendant's charters which were approved and adopted by the Legislature, are set forth, so far as necessary to the presentation of the questions involved here. (Appellants' Abstract, fol. 64, p. 20, to fol. 87, p. 26.)

It is alleged that these acts and charters were enacted in pursuance of the erroneous construction set forth in the bill, of the Treaty of Guadalupe Hidalgo, and of the Act of Congress of March 3, 1851. The truth of this averment is made manifest by other averments of the bill, and by the fact, of which, we suppose, this Court will take notice, that the decisions of the Supreme Court of California, and especially that in the case of Minturn v. Brower, 24 Cal. 644, stood as the accepted and established law in that State, at the time when said acts and most of the charters, were adopted. These acts do not so much profess to grant to the City, the title to the river and its waters—though, they do that, too—as they profess to declare that the City is the owner of them, and they do give, or profess to give, the City absolute dominion over the river and its waters. This, they do in the clearest and strongest lan-

guage that could have been employed for that purpose.

If these complainants, then, are the owners of any rights in the river, as owners of riparian lands, or otherwise, these acts profess to divest them of them. The bill shows that the City and its agents do assert title and dominion over the river. What avail, that the City denies any claim of title under these laws and charters? The fact remains, that the laws still exist and are clouds upon complainants' titles. If one hold a deed to the property of his neighbor, and is in possession and exercising dominion, if the neighbor sue to quiet his title, how will it profit him for the holder of the deed to disclaim under it? Will it be any less a cloud upon the title, so far as the rest of the world are concerned, or are affected and influenced by it? Will not the plaintiff in such suit be entitled to a decree removing the cloud of the deed, however vehement the disclaimer may be?

Still it will, no doubt, be urged and argued, that, in the pleading filed here as an answer to the bill, defendant disclaims any title under these laws.

Our answers to this contention are two:

First: It will not be claimed, we suppose, that the City of Los Angeles, created and incorporated under the Act of the Legislature of California, could have taken or held, from the United States, or any other grantor, four square leagues, or any

other quantity, of land, outside of what might have been necessary to its existence and operations as a municipal corporation, without authority or power to do so had been granted from the Legislature creating it.

It is not claimed that there is anything in the instrument by which the United States conferred the grant of the lands upon the City, which purports to embrace the Los Angeles River, or which, read by an American judge or lawyer, could suggest a thought or a suspicion that the grant was intended to embrace anything but *land*. The first public recognition of any right in the City to the river or its waters, of which any record can be found, is that contained in the legislative enactment declaring—

> "That there be and hereby is granted to said corporation, to be by it held, used and enjoyed in absolute ownership, the full, free and exclusive right to all waters flowing in the River of Los Angeles, at any point from its source or sources, to the intersection of said river with the southern boundary of said City; also the right to develop, economize, use and utilize all waters flowing beneath the surface, in the bed of said river, at any point or points between the points of termini above given, and for that purpose, it is hereby declared," etc. (Appellants' Abstract, fol. 65 *et seq.*, p. 21.).

Again and again this language is repeated in other acts, the last being found in the present

City charter, as amended in 1903, in which the language is changed from that in the first three, so it now reads:

> "The City of Los Angeles shall continue in the ownership and enjoyment of all rights to the water of the River of Los Angeles, heretofore vested in it, its predecessor or predecessors, including the Pueblo of Los Angeles, and is hereby declared to have the full, free and exclusive right to all the waters flowing in the said river, at any point from its source or sources, to the intersection of said river with the southern boundary of said City, and also the ownership of, and the right to develop, economize, control, use and utilize all waters flowing beneath the surface, in the bed of said river, at any point or points between the points of termini above named." (Appellants' Abstract, fols. 80 and 81, pp. 24 and 25.)

Upon this state of legislation found in the acts of the Legislature and the charters of the City, which latter, also, are acts of the Legislature, the City is exercising dominion over the river and over its waters, and asserting title thereto.

Without these laws and charters, the City would have no authority whatever to act at all, nor anything by which to guide or measure its action. Certainly it will not be pretended, that the City would have jurisdiction to act extra-territorially, without it were given by the Legislature of the State, specifically in some law. But for these acts of the Legislature of California, there would ex-

ist no record under the sun that it had or claimed any title of any sort in the River of Los Angeles, or in the waters of that river. It follows logically, therefore, and irrefragably, that if the complainants are the owners of the lands, as alleged in the bill, and, as to most of them, admitted in the answer, the bill is absolutely true in this important averment, to-wit:

> "That the said several acts of the Legislature, and of the defendant City, including the charters of the City, hereinbefore set forth, and including the ordinances of the City under which a Department of it has asserted and exercised the right and authority to take physical control and possession of the river and its waters, and of its tributaries, and under which asserted right and authority, the City, through its agencies, has interfered with the rightful use by the complainants, of the lands severally held and owned by them, and of the waters therein, and of the waters of the said river, are in violation of Section 1979, Title XXIV of the Revised Statutes of the United States, in that the said defendant, under color of said statutes of the State of California, and under color of said charter provisions, and of the ordinances aforesaid, has subjected, and caused to be subjected, the complainants to the deprivation of their property rights, privileges and immunities, secured to them by the constitution and laws of the United States" (Appellants' Abstract, fol. 92 *et seq.*, pp. 27 and 28.)

We submit, with confidence, that there cannot be found in the reports of the decisions of the

Courts of this jurisdiction, a case whose facts more clearly bring it within the purview of the section and title of the Revised Statutes of the United States, referred to, than do the facts of this case. And we further submit that no disclaimer which the ingenuity of counsel might conjure up, can be framed to meet and avoid this ground of federal jurisdiction.

It is not matter which can be cured by *words.* It is not words or legislative enactments alone, as such, that we complain of in the averments just quoted, as working the destruction of our rights, and as depriving us of our property. It is *deeds, acts, done under color of such legislation,* that are working our destruction, that are depriving us of a million of dollars, in depreciating—destroying—the value of our lands; this, it is, that we complain of. It is against such grievous wrongs and injuries so inflicted, that we went into the Circuit Court seeking redress, and that we have come hither in still further pursuit of such redress.

One charged with a crime cannot disclaim it. He may deny it. One charged with trespassing against his neighbor's property or rights, may deny the trespass, but he may not disclaim it. As said by Story, in discussing the question of disclaimer, "one cannot disclaim a liability."

Story's Eq. Pl., Sec. 840.

We repeat again, these averments are not such as can be met and avoided by disclaimers, however oft-repeated and emphasized.

Secondly: But we insist that the answer here, when carefully inspected, will be found to contain no disclaimer. What defendant's counsel have set up as disclaimers are transparently colorable and not genuine nor effective for any purpose. It will be observed that from the beginning to the end of the pleading filed to complainants' bill, defendant denies that complainants have any title or right, riparian or other, in or to the waters of the river, or in the waters of their own lands. Even in the instances—and they are many—in which defendant admits that the complainants owned their lands as alleged in the bill, it always qualifies the admission by saying: "Subject to the rights of this defendant to the use of the waters of the Los Angeles River, hereinafter alleged to belong to this defendant." (Tr. of Record, p. 41, par. 3.)

The same formula is followed in numerous other instances, as found in Transcript of Rec ord, page 42, where it occurs four times.

Again, it admits that it claims the paramount right to the waters of the Los Angeles River, by virtue of grants, laws, usages and customs of the Republic of Mexico and the Kingdom of Spain,

and the Act of the Legislature of April 4, 1850. (Appellants' Abstract, fol. 130, p. 37.)

In the next paragraph, however, it denies, "that it claims that said act of the Legislature granted to it any vested private rights, if any, to the Los Angeles River mentioned in said paragraph XVIIIa, or the waters thereof, which was at the time of the passage of said acts vested in complainants or their predecessors."

Of course, such denial is meaningless as a pleading. The bill does not allege that the act had any such effect; in fact, it could not have such effect. And such denial, if there had been such an averment in the bill, might well have been made upon that ground. But while it is not effective as a denial, it makes clear the effort at ingenuity on the part of the pleader, its meaning being, that the City already owning the river and its waters, under grants, etc., from Spain and Mexico, the complainants had no title to divest, and, therefore, it denies any was divested. Such pleading, we submit, trifles with a grave question affecting complainants' rights.

Again, as showing the whole theory of the answer, when dealing with the matter of the inception and derivation of defendant's alleged title, and the gravamen of the so-called disclaimer, we quote:—

"but, on the contrary, this defendant al-

leges that it is, and ever since said Act of the Legislature passed April 4, 1850, it and its predecessors have been, the owner of all of the rights possessed by said Pueblo of Los Angeles, with respect to the waters of said Los Angeles River, by and through other sources of title than the said confirmation and patent, and that said confirmation and patent were only in recognition of a previously granted and existing right which had been vested in said Pueblo of Los Angeles, from its founding up to its dissolution by said Act of the Legislature, passed April 4, 1850, and which became vested in the municipal corporation created by said Act, under and by virtue of the same."

(Appellants' Abstract, folio 138, p. 39.)

The effect of these averments plainly is, that the ancient pueblo, founded by Spain, back in the eighteenth century, owned the river and its waters from the day of its foundation, and that, therefore, the Mexican pueblo which was dissolved or abolished by the Act of the Legislature of California of April 4, 1850, had, under the Mexican regime, owned the river and its waters, and still owned them at the moment of its dissolution, and that at the same moment the new American city was instituted and took the same title the pueblo had held—"under and by virtue of the same"—that is, under and by virtue of said Act of April 4, 1850.

Instead of a disclaimer, these averments admit the charge of the bill, that defendant claims the

river and its waters under laws, usages or customs or grants of Spain or Mexico, one or both, notwithstanding, the Act of Congress of March 3, 1851, which required all claims to title to be presented to the Land Commission created by the act.

Again, we have averments saying, that defendant denies that it rests its claim to the river and its waters upon these acts of the Legislature and the City charter, but this denial is followed with the remarkable statement: "except only to the extent that the charters of the defendant and its predecessors, as contained in the acts of the Legislature of the State, mentioned in the bill and in the charter adopted by the voters of the City of Los Angeles and approved by the Legislature, had the effect of vesting and continuing in the defendant and its predecessors, the municipal corporation, created by the Act of the Legislature of April 4, 1850, and the other acts of the Legislature and charter mentioned in the bill, such rights with respect to the waters of the Los Angeles River as were possessed by the Pueblo of Los Angeles immediately before its dissolution by said Act of the Legislature of April 4, 1850."

Then it proceeds to say: "but defendant denies that it claims that the acts of the Legislature of the State of California, and the charters of

the City of Los Angeles, or any one of them, granted to the Mayor and Common Council of the City of Los Angeles, or to the City the predecessor of this defendant, any vested private right, if any, to any water flowing, or being upon the surface or beneath it in the bed of the Los Angeles River, or any water or right whatever which was, at the time or times of the passage of said acts, or any of them, or at the time of the adoption of the charter, vested in the complainants, or any of them, or in their predecessors." But, on the contrary, the defendant disclaims having acquired under said acts, any such right which was ever vested in the complainants, or any of them, or in their predecessors. (Appellants' Abstract, folio 152, p. 42, to folio 158, p. 44.)

Instead of "but, on the contrary, it disclaims," etc., the true intent and meaning, and the effect of the pleading here were better expressed thus: "Therefore, defendant denies that the said acts and charters divested any title in complainants, or their predecessors, because and for the reason that such complainants, nor their predecessors, ever owned or possessed any such title."

While the answer, when dealing with this subject, shows many evidences that counsel were fairly taxing their skill and ingenuity in the effort to disclaim what they seem to have under-

stood, must be got shut of in some way, we respectfully submit that the result is really strikingly, and in every instance, maladroit. The bill does not allege that the acts of the Legislature and the charter of the City divested complainants of any title, or that it invested defendant with any title, yet that is precisely what the answer disclaims: "and it disclaims that said acts," etc." "had the effect of granting to the City," etc., "any right which was at the time of the passage of the acts, or any of them, vested in complainants, or their predecessors."

We insist that the author of the answer has wholly misconceived the true intent and meaning of the bill in these respects.

There are three particulars in which complainants complain of the acts and charters enacted by the Legislature of California:

First: Because said acts and charters violate the Fourteenth Amendment of the Constitution, of the United States, for that they deprive, or attempt to deprive, complainants of their property without due process of law.

Second: Because they impair the obligation of the several contracts between the United States and complainants' predecessors in title, the confirmees of the several Ranchos, that is, they impair the effect of the grant made by the United States to such predecessors.

Third: Because, under said acts and charters, the defendant and its agents and officers have asserted and exercised the right and authority to take physical control and possession of the river and its waters, and under such asserted right and authority, the City, through its agencies, have interfered with the rightful use by complainants of the lands severally owned by them and of the waters therein and the waters of the river; that these acts are in violation of section 1979, Title XXIV of the Revised Statutes of the United States, in that the said defendant City, under color of said statutes of the State of California, and under color of said charter provisions, and of the ordinances aforesaid, has subjected, and caused to be subjected, the complainants to the deprivation of their property rights, privileges and immunities secured to them by the constitution and laws of the United States. (Appellants' Abstract, folio 90, p. 27, to folio 95, p. 29.)

That these acts have and do impair the obligations of the contract of grant by the United States to the predecessors of complainants, would seem obvious. Their effect is to render nugatory such grants. And, therefore, it seems, the case falls within the doctrine of that of Fletcher v. Peck, 6 Cranch, 87 (at p. 136,) and that of Dartmouth College v. Woodward, 4 Wheaten 518 (at

p. 624 *et seq.*) And is there any reasonable question that the averments of the bill show that the complainants have been, and are being deprived of their property by the acts of the defendant, its agents and officers, under color of those acts? And if that be so, are not complainants thereby deprived of their property without due process of law, in violation of the constitutional rights secured to them and all persons, by the Fourteenth Amendment of the Constitution of the United States?

This ground of the bill is distinct from that which sets forth that these acts are a cloud upon title. Both things are true, manifestly and indubitably. To be sure, the defendant denies they are true, but it can hardly be contended, that industrious as counsel have been in their efforts in that behalf, they have succeeded in making any disclaimer that meets either one of these grounds of jurisdiction in the bill.

As already suggested, it seems not only illogical, but an impossible thing for a defendant to disclaim a cloud upon title in such manner as would entitle him to have the cause dismissed for want of jurisdiction. In an action to quiet title generally, a defendant may disclaim, and by so doing, save himself from costs; but following such disclaimer, is not a dismissal of the case, but a decree quieting plaintiff's title.

If an action be brought to remove the cloud of a recorded false outstanding deed, against the apparent grantee of such deed, the defendant may disclaim any title under the instrument, but if he do so, the case will not be dismissed. The plaintiff will take his decree, declaring the deed a nullity, and removing the cloud.

If, therefore, a bill in the Circuit Court sets forth that a defendant claims title under statutes of a state—there actually being such statutes—purporting to invest him with some right or title in the plaintiff's property, and the prayer of the bill is that the cloud of such laws be removed from plaintiff's title, and the defendant appears and asserts title and endeavors to maintain it, the jurisdiction of that Court would be, we suppose, unquestionable, and it would proceed with the case to judgment. But if defendant appears and disclaims title under the laws set up in the bill, it is said that the Court will not proceed, but will dismiss the cause. The bill would equally in either case, disclose a ground of federal jurisdiction. The statutes and, therefore, the clouds upon the title, are equally obvious in both cases. The disclaimer would no more remove the clouds than would a denial; and if the bill be dismissed, the clouds still stand as much a menace as before.

Now, the Court having jurisdiction of the cause under the facts of the bill, why shall it not remove

the clouds? If the Court refuses to proceed in such case, then it seems that the easy way for a defendant to defeat his adversary and perpetuate the cloud upon the adversary's title, is, not to assert any right or title under the law, but, to disclaim all such right and title. To be sure, the law will still stand, as much a menace and a cloud as before. Indeed, such proceeding generally is not instituted so much to obtain a decree against the defendant, as to obtain a judgment against the vicious law, declaring it a nullity. And we respectfully submit, that no sufficient reason has been suggested in this case why a plaintiff in such suit shall not have his decree.

Complainants have been given to understand that the ruling of the Court below, in the present cause, finds, or, at least, may find, support in the case of Crystal Springs Land & Water Co. et al., v. City of Los Angeles, 82 Fed. R. 114. And since we have been led to suppose that defendant will rely here, in some measure, upon the decision of that case, and the fact of its affirmance in this Court, under the same title, 177 U. S., p. 169, we shall now give it attention.

The bill of complainants' in that cause was one to quiet title generally. The prayer, as stated by the learned judge in the opinion, was, "for a final decree quieting the title of the complainants to said waters, water rghts and the works therewith

connected." In the statement of the case by the judge delivering the opinion, it is said that the complainants maintain that the suit was one of federal cognizance on two grounds: First, that the suit arose under the Treaty of Guadalupe; second, that the defendant's claim to the water properties described in the bill, was based in part at least, on acts of the Legislature of California, which acts, if construed as making the grants claimed by defendant, are repugnant to the Constitution of the United States, and, therefore, the case is one arising under said Constitution.

The bill itself, as set forth in the opinion, upon the subject of state legislation, recites that certain acts of the Legislature (giving the date of their passage) undertook to grant to the City of Los Angeles, certain rights, and among them, the full, free and exclusive right to all the waters flowing in the river, from its sources to the intersection of the river with the southern boundary of the city, and the right to develop, economize, etc., such waters.

So far as discoverable from the bill as set forth in the opinion, there appear no other averments than those which respect the acts of the State Legislature, which may be supposed in any way to suggest a federal question or federal questions, and the allegations in respect of the acts of the Legislature are confined to the averments merely,

that they undertook to grant to the City the rights set forth.

It will be seen, therefore, that the bill in the case at bar, is, in every important respect, different from that in the case cited. In the first place, the present suit has for its objects, as we have already seen, not the quieting of title generally, but the removal of specifically alleged clouds upon such title. There are shown to have arisen out of an erroneous construction placed upon the Treaty of Guadalupe Hidalgo, and a like erroneous construction placed upon the Act of the Congress of March 3, 1851, and a claim set up under such erroneous construction, that the defendant City has the right to, and does rest its title, not upon proceedings prescribed by the said act of Congress and the grant from the United States following upon the judgment of the tribunals given jurisdiction to act under that law, but upon grants, usages or customs of Spain or Mexico, one or both. In short, that it is the owner of the Los Angeles River and its waters, although it took no proceedings under the act of Congress to establish and acquire title thereto.

The bill here further shows that the acts of the Legislature—which are specifically set forth—were enacted in pursuance of the same erroneous construction of the said Treaty and the said acts of Congress, and that because they professed to

bestow the title of the river and its waters upon the defendant in some instances, and in others, to declare that the title is in said City, they constitute clouds upon complainants' titles and render the property of plaintiffs thereby of greatly less value.

It is further averred, that the City, acting through its agencies, has, under the said acts of the Legislature, asserted and exercised the right and authority to take physical control and possession of the river and its waters and of its tributaries, and under such asserted right and authority, has interfered with the rightful use by the complainants, of the lands severally held and owned by them, and of the waters therein, and of the waters of the said river, in violation of Section 1979, Title XXIV of the Revised Statutes of the United States, in that, the defendant City, under color of such statutes, and under color of said charter provisions, has subjected, and caused to be subjected, the complainants, to the deprivation of their property rights, privileges and immunities, secured to them by the Constitution and laws of the United States.

It will be seen, therefore, that complainants do not complain so much that the acts of the Legislature have divested them of any title, or invested any title in the defendant, as that, they have conferred upon the City an extra-territorial jurisdic-

tion, under which it has asserted and exercised power—and asserted the right to exercise such power—to the serious detriment and depreciation of the values of complainants' property, and that it has, under color of said acts and charters, deprived them of their property. These averments of the bill present a case of a wholly different category from that to which the case cited belongs.

The complainants—taking the averments of the bill as true, as I suppose must be done here—have suffered injuries in their property rights, which nothing short of a decree of a Court of competent jurisdiction, can redress or stay. In the case cited there may properly be said to have been some reason for the view, that if defendant disclaimed any title as enuring to it through the legislative enactments referred to, such disclaimer met that phase of the bill, since the bill itself averred that certain acts of the Legislature undertook to grant to the City certain rights, etc. If the defendant did disclaim that it had any rights under such a grant, it would seem that, as to that feature of the case, there was no controversy between the complainants and the defendant, though, we respectfully submit, if that had been the only matter in controversy between the parties in the case, not a dismissal of the bill, but a decree quieting complainants' title, should have

followed thereupon. But however effective such disclaimer may have been to such averments, they are clearly futile when addressed to the averments of the present bill.

As further showing the futility of what are called disclaimers, we may be pardoned if here we refer to certain facts which appear upon the record of the case cited, and upon the present record, taking the two together. It will be seen that the decision in the case cited was rendered on the 9th of July, 1897. The disclaimer, therefore, of any right or title as arising out of the charters of defendant City, filed in that case by defendant's counsel, were filed at about that date. Yet by reference to the record in this case, it will be seen that in December, 1902, an election was held in the City of Los Angeles, at which, amendments of the charter were voted upon and adopted, and among such amendments was one declaring that the City should continue in the ownership and enjoyment of all rights to the waters of the River Los Angeles heretofore vested in it, its predecessor or predecessors, etc., which amendments were later approved and enacted by the Legislature of the State of California. So, it would seem, that the disclaimer filed by counsel of the City in that case, was not regarded as in any way estopping the City or the Legislature from re-asserting and re-

enacting, that the title of the Los Angeles River or of its waters, was still in the defendant.

And that brings us to a suggestion upon which we shall not enter at large, for the reason that we believe we have shown that there are, in fact, no disclaimers in defendant's answer to the bill, that the counsel in that case nor in this had any power to disclaim the effect of the acts of the Legislature of California. Indeed, the proposition seems to us most extraordinary, that a lawyer, employed to appear as the attorney of a municipal corporation, can disclaim the effect of a solemn enactment of a sovereign state.

We deny, as untenable, the proposition that the City of Los Angeles, even through its Common Council, by any action which it could take, could disclaim, deny or in any way affect the validity of a legislative enactment. No power outside of a judicial tribunal is clothed with any such authority. We submit, it would be a dangerous doctrine to establish in this country, to hold that the exercise of powers by the Legislature of a State, or the effect of its enactments, can be so revised and annulled by a party to a suit, or an action, in any sort.

It should be observed, too, that no authority is anywhere shown as coming from the City Council, authorizing or empowering its counsel, appearing in this case, to make any such dis-

claimer as they have attempted to make in the answer here.

In conclusion, we respectfully submit that the bill presents federal questions. Indeed, as said in the beginning, we believe that it does not present any question not properly cognizable in the Courts of this jurisdiction. And that therefore, the decree of the Circuit Court dismissing the bill and cause for want of jurisdiction is erroneous, upon the several grounds specified in the Assignment of Errors.

Wherefore, complainants pray that the judgment and decree of the Circuit Court be in all things reversed and for such further orders as are proper in the premises.

C. F. McNUTT,
Solicitor for Complainants.

STEPHENS & STEPHENS,
WARREN E. LLOYD, and
J. E. HANNON,
Of Counsel.

We beg leave to append and adopt a condensed brief of jurisdictional points prepared by Mr. Lloyd, one of the counsel associated in the proceedings in the Circuit Court, which we think will properly supplement what has already been said.

As will be seen from the abstract of the record, this case involves title to real estate. Numerous parties owning lands on the Los Angeles River above the City of Los Angeles unite in a common bill for relief against the encroachments of said city upon their rights to use the waters in their lands and appurtenant thereto. The claim of complainants is that they own their lands and the waters in them. They seek relief against a claim of the city that it owns the Los Angeles River and the right to take all the waters of said river whenever needed for territory within the present city's limits or for territory that may hereafter be added to said city, and further that all water in the lands of the complainants is a part of the Los Angeles River. There could not be a more limitless claim on the part of the defendant or a more direct putting in issue of the most valuable rights in complainants' lands. As we shall show, this conflict of claims involves questions which inevitably require the construction and application not only of the constitution and laws of the United States, but also of the

Treaty of Guadalupe Hidalgo for their proper solution.

The conflict over Federal questions, in one sense, is admitted in the case, but the argument of counsel for defendant in the Circuit Court and the oral opinion of the Judge denying jurisdiction of the bill practically assumes that complainants must state their claim without referring to the very thing against which they seek relief. While we are familiar with the rule that jurisdiction cannot be created in a Circuit Court by anticipating and alleging defenses which the answer may never contain, it is not, and never can be, a rule of equity that complainants are precluded from stating the very matter in issue so as to ask relief thereon.

In the present case, the defendant city asserts a specific claim against complainants' title, and common to them all. Complainants do not seek relief against anything else. They join only to quiet title against this particular claim. They seek to have removed only the clouds on their titles created by defendant in asserting this particular claim. The city claims that complainants cannot use any of the waters in their lands except when defendant does not need them and that claim is the gist of the action. The true cause of action cannot be stated without singling out this peculiar claim. Complainants have no

other grievance against the defendant, and if defendant admits in a binding way that it no longer makes the claim specified, then they have by admission and disclaimer all the relief they seek. Under the rules of equity pleading complainants have stated in their bill their true cause of action, and in so stating it Federal questions instantly appear. The matter in dispute brings them within the jurisdiction of the Circuit Court. There is no way by which that jurisdiction can be divested so as to deprive complainants of the benefit of an answer if the matters stated in the bill were really in controversy between complainants and defendant at the time of filing the bill. A disclaimer so broad and far reaching that it abandons all issues raising Federal questions would undoubtedly stop the further progress of the suit. In a technical sense it might divest the court of jurisdiction. Complainants, however, would be entitled to a judgment showing this admission and disclaimer of defendant, and through it would obtain all relief which they seek in the case. If defendant elects to waive its claim by a solemn plea, it cannot elsewhere assert it. It is matter by which the defendant is bound. But defendant has filed no valid disclaimer in this case. It alleges that complainants have never had title to the water in dispute. It continuously and earnestly insists on its peculiar claim. It

pleads as a conclusion of law that it disclaims interfering with "vested rights," and yet in every sentence bearing on the matter sets forth its own interpretation of the word "vested" and the word "rights." In that interpretation it maintains the conflict in its most aggravated and serious form. The question of what are or were vested rights in this case involves exactly the question of title that complainants raise. Unless "title", is disclaimed, the words called a disclaimer mean nothing. This feature we shall advert to later, but we shall first show wherein the suit really and substantially involves a controversy within the jurisdiction of the Circuit Court.

The bill, analyzed from the jurisdictional standpoint, involves the following questions:

1. Did the laws of Spain and Mexico make all the waters in the lands of complainants subject to the Pueblo of Los Angeles, and is the defendant City of Los Angeles full successor to the Pueblo?

2. If such were the laws of Mexico and Spain, do they survive in such manner as to make all the waters in the lands of complainants subject to the defendant city; or, in other words, do the acts of Federal authority and Federal laws set forth in the bill modify, reduce or limit these claims?

3. Is the claim of defendant as set forth in the bill such an impairment of title, and are the acts and ordinances supporting it such clouds on title, as equity will remove?

4. Have the complainants, under the Treaty of Guadalupe Hidalgo and under the laws and political acts of the United States with reference to the territory acquired from Mexico, such vested rights in their property as the Constitution and laws of the United States protect?

5. Does the judgment and decree of the United States Land Commission under the act of March 3, 1851, stand as *res adjudicata* between complainants and defendant by reason of the fact that the United States thereby reduced the claims, ownership and possession of defendant and retained in itself title to the specific land which it subsequently conferred on complainants' predecessors in title?

6. Can the patents from the United States with reference to complainants' land and the patent to the defendant's land, where worded the same, be interpreted differently; or, in the particular state of facts set forth in the bill can either party go back of the patents?

In discussing the above questions we will show, as to each one, that a Federal question is necessarily involved in complainants' own statement of their case.

The construction and application of the treaty of Guadalupe Hidalgo is involved in the case as set forth in appellants' eighth specification of error.

Articles VIII and IX of said Treaty protect the property of all Mexicans residing in the conquered territory and all Mexicans owning property therein. Article V defines the boundary line between the two Republics, and by Article XII the United States, in consideration of the extension of its boundaries, engages to pay Mexico $15,000,000. By the Conquest of Mexico and under this Treaty, and in consideration of the payment of said $15,000,000 to Mexico, the United States became the owner of all public property within the conquered territory. It became the absolute owner of all land and waters formerly owned by the Crown of Spain and the Republic of Mexico not reduced to private dominion, and it acquired absolute right in and control over the property of all municipal corporations within said territory. It could create, erect, change, reduce or abolish at will all municipal corporations within the conquered territory and do with their property what it would. The title to all Pueblo lands and waters passed to the United States. It was under no obligation regarding them, or indeed, regarding any property in the conquered territory, except to carry out the pro-

visions of the Treaty, and in exercising ownership, authority and dominion over the territory and property obtained by said Conquest and Treaty, the United States created a Land Commission to determine all questions of land titles to which it was a party. Through and by this Land Commission and the decree of its courts it reduced the claims of the municipality to which defendant claims to succeed and ascertained and settled the titles to the land involved in this suit. It reduced the holdings to such form that the rights of the respective parties might be determined according to American Law. With reference to the municipality, the jurisdiction of Spain and Mexico ended and that of the United States began.

The Treaty of Guadalupe Hidalgo is inevitably involved in the question as to what rights in and power and control over the Pueblo of Los Angeles and its lands passed to the United States under said Treaty. Complainants maintain that the United States under said Treaty purchased all public property and had the right, first, to determine what ownership and possession of property was exercised by the Pueblo, and second, if it deemed it for the public good, or a part of its governmental policy, to reduce the holdings of said municipality. They further claim and allege that the United States did act in the mat-

ter, did reduce the Pueblo, did retain in itself all claims of the defendant City with reference to the specific lands involved in this suit, and did subsequently confer all title thereto upon complainants' predecessors. Complainants, therefore, derive directly from the United States at least such portion of the title to their lands as was ever claimed or possessed by the Pueblo of Los Angeles or by defendant as its successor. Having these rights under the treaty, laws and constitution of the United States, there is jurisdiction in the Circuit Court to protect them.

The authorities sustaining these propositions are numerous and uniform.

Under Spain and Mexico the title to all pueblo property was in the sovereign and the municipality never acquired a vested interest therein.

> "It cannot be doubted that under the law of Spain it was necessary that the proper authorities should particularly designate the land to be acquired by towns or pueblos before a vested right or title to the use thereof could arise."
>
> United States v. Santa Fe, 165 U. S. 707:
>
> United States v. Sandoval, 167 U. S. 295.
>
> "The fee of the lands embraced within the limits of pueblos continued to remain in the

sovereign, and never in the pueblo as a corporate body."

Hall's Mexican Law, p. 53, Chap. VII, section 122;

United States v. Sandoval, 167 U. S. 297.

"In discussing the second ground on which the Act is alleged to be unconstitutional it becomes material to enquire into the tenure by which the title to this land was acquired and is now held by the City and County. It is conceded to be a portion of what are known as the pueblo lands held by the City and County of San Francisco, as the successor of the former Mexican Pueblo of Yerba Buena. The nature of this title has been so often discussed and repeatedly adjudicated by this court that it would now be a work of supererogation to undertake anew a critical analysis of it. It will be sufficient to state generally that it has been established by these decisions too firmly to be shaken or overthrown at this late day that neither the former pueblo, nor the city and county, as its successor, ever held an indefeasible proprietary interest in these lands. On the contrary they were and are held only in trust for certain municipal purposes. Under the Mexican system, while the pueblo might dispose of the lands or use them in pursuance of the trust on which they were held, they were nevertheless subject to the disposition of the Governor without the consent of the municipal authorities."

San Francisco v. Canavan, 42 Cal. 555.

"So far as the present case shows, the pueblo lands of Santa Cruz had not been

located and marked out prior to the cession of California to the United States; and under the rule in Estrada v. Murphy, its title whatever it may have been, was therefore imperfect, and being imperfect was therefore within the operation of the Act of Congress."

Stevenson v. Bennett, 35 Cal. 433.

"We are satisfied from the above authorities that while under the Mexican law the officers of a pueblo were empowered to make grants of the pueblo lands, yet the pueblos had no indefeasible proprietary interest in them; that they were held in trust for public and municipal purposes, subject to the control and disposition of the Mexican Government."

City of Monterey v. Jacks, 139 Cal. 553.

"If on the other hand, it were a mere license at the pleasure of the former government to occupy the land, such right would not prevent that government from granting the land unencumbered with such right. This was the case in reference to pueblos under the former regime. The pueblos held title in trust for the use of the inhabitants, not conferred by special grant, but under the laws and regulations of Spain and Mexico, and there were many cases where such governments made specific grants within the territorial limits of the pueblos which were, after the change of government, confirmed and patented by the United States, under the Act of Congress of 1851. The United States, succeeding to all the rights and sovereignty of Mexico, had such power to grant all public lands—that is, all lands not claimed by private parties; and if own-

ed or claimed by private parties, and not presented for confirmation, the claims were waived or forfeited, and such lands thereafter became public lands."

Harvey v. Barker, 126 Cal. 274.

"Section 37. The power of the legislature to alter and abolish municipal corporations, to erect new corporations in the place of the old, to add to the old, or to carve out of the old a new corporation, or the power to divide and dispose of the property held by such corporations for municipal purposes, is not defeated or affected, by the circumstance that the corporation is, by its charter, made the trustee of a charity, or of other private rights and interests."

Dillon on Municipal Corporations, section 37.

"The Kings, the fountains of jurisdictions, are the owners of all the *terminos* situated in their kingdoms, and as such can donate them, divide or restrict them, or give any new form to the enjoyment thereof, and hence it is that the pueblos cannot alienate their *terminos* and *pastos* without precedent royal license and authority."

Elizondo's Practica Universal Forense, Vol. 3, p. 109;

Quoted in United States v. Sandoval, 167 U. S. 296;

United States v. Santa Fe, 165 U. S. 708.

The United States succeeded to all the dominion of the Mexican government over pueblos and the fee to lands embraced within the limits of the pueblo and intended for community use passed to the United States.

"Moreover, the general theory of the Spanish law on the subject indicates that, even after a formal designation, the control of the outlying lands, to which a town might have been considered entitled, was in the King, as the source and fountain of title, and could be disposed of at will by him or by his duly authorized representative, as long as such lands were not affected by individual and private rights. This is shown by the quotation from Elizondo, already made. The provisions of law 14, title 12, book 4, of the Recopilacion (2 White, New Recop. p. 52), * * * illustrates the absolute control thus exercised by the King of Spain over the subject?"

The existence of this power of control and disposition as to municipal lands in the supreme Spanish and then Mexican authority was shown by further references, and various acts of Congress were cited as enacted in view, "of this state of the Spanish law and the unquestioned power lodged in the King of Spain to exercise unlimited authority over the lands assigned to a town and undisposed of and not the subject of private grant, to all of which rights the United States succeeded as successor of the King of Spain and the Government of Mexico."

United States v. Sandoval 167 U. S. 296.

"We have just held in United States v. Sandoval, ante, 278, that as to all unallotted lands within exterior boundaries where towns or communities were sought to be formed, as in this instance, the title remained in the government for such disposition as it might see proper to make."

Rio Ariba Company v. United States, 167 U. S. 308.

"The title, with that to other unappropriated lands of the pueblo, undoubtedly passed to the United States."

Holladay v. San Francisco, 124 Cal. 356.

"The legal title to the squares, as already stated, vested in the City (San Francisco,) by the operation of the act of Congress of July 1, 1864."

Hoadley v. San Francisco, 50 Cal. 275.

"The United States, succeeding to all the rights and sovereignty of Mexico, had such power to grant all public lands—that is, all lands not claimed by private parties; and if owned or claimed by private parties, and not presented for confirmation, the claims were waived or forfeited, and such lands thereafter became public lands."

Harvey v. Barker, 126 Cal. 275.

"The result was, that upon the conquest, all the property upon this peninsula (San Francisco) which had not already passed into private ownership became part of the public domain of the United States, and subject to the same laws as affected other portions of the public domain."

United Land Assn. v. Knight, 85 Cal. 470.

"Their title from this source depends for its validity upon the soundness of the claim which they urge, that the land originally belonged to the City of San Francisco. This claim, however, is untenable. Upon the conquest of California title to the lands of the pueblos which had not passed into private ownership vested in the United States. (Grisar v. McDowell, 6 Wall. 364; Trenouth v. San Francisco, 100 U. S. 253; United etc. Assn. v. Knight, 85 Cal. 470; Thompson v. Doaksum, 68 Cal. 596; People v. Holladay, 68 Cal. 443.) It is not claimed that these lands were held in private ownership prior to the commissioners' deed. And, as it has been decided that the reservation of the presidio was a valid executive act which excluded these lands from acquisition by private individuals (Grisar v. McDowell, supra), it follows, necessarily, that the commissioners' deed was ineffectual and worth less as a conveyance of title.)"

Galvin v. Palmer, 113 Cal. 52.

"The nature of the title of San Francisco to her pueblo lands," said the Supreme Court of the United States, in Palmer v. Low, 98 U. S. 16, "has often been the subject of consideration in this court ,and was carefully stated by Mr. Justice Field in Townsend v. Greeley, 5 Wall. 326, and Grisar v. McDowell, 6 Wall. 363. At the time of the conquest, the pueblo, of which the city of San Francisco became the successor, did not have an indefeasible estate in the unconveyed portion of those lands, but only a limited right of disposition, and use, subject in all particulars to the control of the government of the country. 'It was a right, which the gov-

ernment might refuse to recognize at all, or might recognize in a qualified form.' (9 Wall. 373.) Upon the conquest, the United States succeeded to the rights and authority of the Mexican Government, subject only to their obligations under the Treaty of Guadalupe Hidalgo. As before that time the fee had not passed out of the government of Mexico, it was transferred to the United States by the conquest and the treaty which followed."

People v. Holladay, 68 Cal. 443.

"It was doubtless a consideration of this state of the Spanish law and the unquestioned power lodged in the King of Spain to exercise unlimited authority over the lands assigned to a town and undisposed of and not the subject of private grant (to all of which rights the United States succeeded as successor to the King of Spain and the Government of Mexico), which caused Congress, in enacting the laws of 1864 and 1866, to carve out of the claim of San Francisco such land for public purposes as it saw fit, to authorize further reservations to be made within a period of one year, and to subject the lands relinquished to specific trusts imposed not alone upon the municipality of San Francisco, but also upon the general assembly of California. The power thus asserted by the act was not new, but conformed to and accorded with the practice of the government from the beginning."

United States v. Santa Fe, 165 U. S. 711.

From the foregoing cases, it is clear that the

United States became the owner in fee of all pueblo lands not assigned to private ownership and had and exercised, as political sovereign, the same power and full dominion over the municipality as was formerly exercised by Spain and Mexico. It is also clear that the United States held this title in such manner that it could withhold it entirely from any pueblo then existing, or grant it in such modified form as might be deemed best to any municipality created or recognized by the State of California having power to take and hold property of that character. As under Spain, the United States was free to "give any new form" to the enjoyment, United States v. Sandoval, 167 U. S. 296, or, as was said in Grisar v. McDowell, 6 Wall. 363, quoted in United States v. Santa Fe, 165 U. S. 709, "It was a right which the government might refuse to recognize at all, or might recognize in a qualified form." As a matter of fact, there are numerous claims on behalf of towns and pueblos which the United States has refused to recognize, and such claims as it has recognized have, almost without exception, been in a limited and modified form.

The plenitude of this title in the United States appears from the consequences the courts have given to it. As an illustration, we cite People v. Holladay, 68 Cal. 439, in which it was held that a judgment between the City of San Fran-

cisco and a private individual, rendered prior to the grant from the United States to said City of the pueblo land in dispute, is no bar against said City, because the grant from the United States is an after acquired title which could not be put in issue at the time the judgment pleaded was rendered; and further, because the Attorney-General of the State had no power to submit to the determination of any tribunal the title of the government of the United States.

In Galvin v. Palmer, 113 Cal. 52, it was held that a deed of a Commissioner of the City of San Francisco, purporting to convey pueblo land of said City prior to a valid executive act of the United States vesting title of the same in the municipality, is worthless as a conveyance.

In San Francisco v. Canavan, 42 Cal. 541, it was held that the State Legislature has absolute power over the pueblo lands of the City of San Francsco on the theory that as soon as the United States recognized the title of the municipality in the pueblo lands, the State of California as sovereign acquired the same right the United States formerly had to enlarge or limit the power of the municipality of San Francisco in respect of the disposition of the pueblo lands. The court says:

> "These authorities conclusively establish that the tenure by which these lands are held is wholly different from that by which lands

acquired by a municipality by gift or purchase are ordinarily held; and whatever may be the extent of the legislative power over the latter class of lands, there can be no doubt, I think, that in respect to pueblo lands it is competent for the legislature to control and direct how they shall be managed and controlled, or disposed of by the municipal corporation."

* * *

"But it is well settled, in this State at least, that municipal corporations are but subordinate subdivisions of the State Government, which may be created, altered, or abolished, at the will of the legislature, which may enlarge or restrict their powers, direct the mode and manner of their exercise, and may define what acts they may or may not perform, subject, however, to the limitation that the legislature cannot direct the performance of an act which will impair the obligation of a contract."

San Francisco v. Canavan, 42 Cal. 557.

In United Land Association v. Knight, 85 Cal. 467, it was held that title to the tide-lands having passed from the United States to the State of California at time of admission to the Union, and prior to the grant of the pueblo lands to the City of San Francisco, said City could not claim said tide-lands under a survey of her pueblo lands which infringed on said tide lands and did not conform to the decree confirming said pueblo lands. This case, on writ of error, was carried to the Supreme Court of the United States,

Knight v. U. S. Land Association, 142 U. S. 161, 188, 189, and the decree of the Supreme Court of California reversed. The court held that the decree of the land commission and the final survey were valid executive acts of the United States in respect of the title in question, and that, whatever the former state of title, the patent operated both as a quitclaim of any right derived under the former Mexican Government and as a deed of conveyance of such interest as the United States possessed. In either case, the patent would relate back to the filing of the petition and be conclusive evidence of the right possessed, except as to third parties holding a superior title such as would enable them to resist the action of the government in disposing of the property.

By the act admitting the State of California into the Union, approved September 9, 1850, it was provided,—

> "That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned;"
>
> "By the Act of March 3, 1851, c. 41, 9 U. S. Stat. 631, Congress created a board of land commissioners to determine claims to land in California 'by virute of any right, or

title, derived from the Spanish or Mexican Government', section 8."

United States v. Sandoval, 167 U. S. 291.

"The common law of England, so far as it is not repugnant to, or inconsistent with, the constitution of the United States, or the constitution or laws of the State of California, shall be the rule of decision in all the courts of this state."

Act of Legislature of California, approved April 13, 1850, Statutes of California, 1850, page 219.

Lux v. Haggin, 69 Cal. 337.

Having shown conclusively that title to all pueblo lands, not vested in private ownership, passed to the United States at the time of the conquest of Mexico, let us now take up the issues tendered by the bill to see wherein they involve Federal Questions. All the complainants except O'Connor and Little claim under Mexican and Spanish grants, confirmed by the Land Commission of the United States, and patented to complainants' predecessors. (Transcript pp. 24-27.)

The Complainants, O'Connor and Little, own sectionized land formerly a portion of the public domain of the United States, and not included in the boundaries of a Mexican or Spanish grant. (Tr. p. 15.)

The lands of complainants are outside the

limits of the City of Los Angeles and on the upper portion of the Los Angeles River and riparian thereto. (Tr. p. 30.) The "defendant City claims the paramount right to the waters of said Los Angeles River and the river itself by virtue of grants, laws, usages and customs of the Republic of Mexico and Kingdom of Spain made and in vogue prior to the cession of the territory embraced within the State of California to the United States of America," and by virtue of the acts of the legislature of the State of California referred to in the bill supporting and giving a special construction to those alleged rights. (Tr. p. 29.) The defendant further claims that all the waters in all the lands of complainants are a part of said river. (Tr. p. 31.) Nothing is left to defendants of water in or upon their lands.

The whole case can be summed up in one question. Did the laws, usages and customs of Spain and Mexico, or any grant under them, confer on the Pueblo of Los Angeles a paramount right to all the waters in the lands of complainants which survives in defendant at the present time? This issue is raised by the bill. It is doubtful if any but Federal questions are involved in this case and complainants and defendant are on opposite sides of each.

1. Complainants claim that their titles are protected by the treaty of Guadalupe Hidalgo and

that under Spanish and Mexican law, in all events, they had rights in water in their lands which the United States was obligated by said treaty to protect and did protect. Defendant does not disclaim title to this water, but on the contrary in its answer it claims all the water in the lands of complainants (Tr. p. 54), and admits expressly "that it rests its rght and claim to the said Los Angeles River and to the waters thereof, including the waters in the lands of complainants in this suit, in part, upon the Treaty of Guadalupe Hidalgo." (Tr. 55, Par. 22 of Answer.) Now the Complainants seek relief only against that part of defendants' claim which arose before the Treaty of Guadalupe Hidalgo. Each side contends for a different construction of the treaty. Complainants claim that the treaty protects such water rights as they had under Mexican sovereignty, except that the decrees of confirmation and patents from the United States now define their rights in the stream in terms of the common law, as interpreted in this State, and that the unassigned lands of the pueblos passed to the United States under said Treaty. Defendant claims that said treaty protected the rights of pueblos as well as private individuals meaning thereby the inchoate rights in land not assigned to private ownership, and concerning which com-

plainants claim the fee to have passed to the United States.

2. Complainants claim that under the Act of Congress of March 3, 1851, all claims to land, not presented for confirmation within two years to the commission created by said act, became a part of the public domain of the United States, and that this peculiar claim of defendant was never confirmed under said act and therefore if ever existent, lapsed. (Tr. pp. 31-32.) Defendant does not deny that it asserts the paramount claim affecting the land of complainants, but on the contrary alleges that the decree of the land commission confirming four square leagues to defendant had the effect of confirming all rights with respect to said Los Angeles River formerly owned by said Pueblo of Los Angeles, (Tr. p. 50), meaning thereby to claim all the waters in the land of complainants, and denying that the United States did confirm or grant the same to complainants' predecessors.

3. Complainants claim that the United States, acting through the Land Commission created by the Act of Congress of March 3, 1851, rejected twelve of the sixteen square leagues of land claimed by the defendant in its petition for confirmation, and thereby forever reduced the claims and rights of the municipality, originating under Spain or Mexico and surviving under the

United States, to a holding of four square leagues with their rights to be interpreted according to the common law. (Tr. p. 28 Par. XVI of Bill.) The defendant nowhere gives any effect to this reduction of its claims by the United States. Three-fourths of its claim to land was rejected, yet defendant still claims all the water in the very lands to which its title had been denied and in lands beyond them to which it never made claim before said commission. It further claims these rights under its own partisan interpretation of the laws of Mexico and Spain, entirely ignoring the fact that it now holds title to its common land under the United States and by a grant made in terms of the common law.

4. Complainants claim that the confirmation of their lands by the United States and patents issued vested in their predecessors fee simple title to the same with the waters therein, and that said confirmation and patents were executive acts sufficient to confer on complainants full title to their lands, freed from any claims of defendant, by reason of the fact that the United States at the time held in fee the title to all pueblo lands not assigned to private ownership, and by the fact that the United States by similar executive act reduced the claims of defendant by three-fourths. The defendant nowhere disclaims an interest in these lands so granted to

complainants' predecessors, but on the contrary alleges that complainants do not have any right, title, interest, or estate of, in or to the waters of said Los Angeles River, or any part thereof, save in subordination to defendant. (Tr. p. 51.) Defendant further admits it claims that all the waters in the lands of defendants are a part of said river. (Tr. p. 52.)

5. Complainants claim that defendant as successor to the pueblo is not now the owner of any rights in land formerly owned by the pueblo, **except those confirmed and patented to it by the** United States, which confirmation and patent does not include any interest in the lands of complainants. (Tr. pp. 30-31.) Defendant does not disclaim or deny that it claims, as successor to the pueblo, rights in lands other than such as have been confirmed and patented, but on the contrary alleges "that it is, and ever since said act of the legislature, passed April 4, 1850, it and its predecessors have been, the owner of all the rights possessed by said pueblo of Los Angeles **with respect to the waters of said Los Angeles** river, by and through other sources of title than the said confirmation and patent". (Tr. p. 51.)

The question of what are or were vested rights in this case involves federal questions conferring jurisdiction.

The references in the preceding paragraphs to the answer of defendant are not made with the purpose of showing averments to create jurisdiction, irrespective of the bill. They go to the question of a disclaimer, and are cited with reference to that point. If defendant has made a valid disclaimer, it must appear from reading the answer as a whole. When that is done, it is manifest that defendant has disclaimed nothing. In the passages purporting to be a disclaimer it uses only the words "vested rights", or "vested private rights, if any." (Tr. p. 50.) What kind of disclaimer is it that leaves defendant free to give its own interpretation to the words "vested," "private," "rights" and "if any"? Throughout the answer it asserts claims entirely inconsistent with having disclaimed any interest in complainants' lands or with having avoided the Federal questions involved in the bill. Defendant attacks the title of complainants in their incipiency, and, placing its own construction on the treaty, laws and executive acts of the United States, denies that under Spain or Mexico or by the confirmations and patents from the United States, complainants ever received "any title to

any of the waters within any of the lands embraced in any of said ranchos, which formed a part of the stream, surface or subterranean, of said Los Angeles River, or which found their way into said river, whether by flowing, percolation, filtration, oozing or any other means whatsoever". (Tr. p. 47.) Denying throughout that complainants ever had title, and particularly denying "vested" title, what virtue has a paragraph "disclaiming" that defendant interferes with "vested" rights or title?, Complainants are entitled to a disclaimer which shall be a genuine admission that the defendant does not claim the waters in complainants' lands under its own interpretation of the laws of Mexico and Spain, and not a pleading of legal conclusions settling nothing and leaving complainants' titles more obscured and clouded than before. Only by such a disclaimer can the issues raising Federal questions be avoided.

But there is another objection to this disclaimer equally serious, and that is, that it is *ultra vires* and cannot remove the clouds on complainants' titles created by legislative acts. The municipality is a creature of the legislature of the State of California in respect of these rights. Title to the whole Los Angeles River is purported to be vested in the municipality by the legislative acts and rendered inalienable. (Tr. p. 33.)

A legislative grant is prima facie valid. The disclaimer in the form offered is insufficient to repair the mischief created by the long series of legislative and municipal acts set forth in the bill. Worst of all, however, it is not intended to waive or disclaim anything.

The amended bill is framed according to the rules of equity pleading established by the Supreme Court of the United States under Sec. 917 of the Revised Statutes, and in all respects follows well settled practice in equity.

Equity, Rule 21 of the Supreme Court, which under section 917 of the Revised Statutes regulates the practice in the Circuit Courts, expressly provides that,

> "The plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter-averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant by way of defense or excuse to the case made by the plaintiff for relief."

Owing to the inartificial and narrative nature of a bill in equity, it might well be that in many bills of complaint, especially those containing "a charging part," statements are made regarding the defendants' claim, excuses and pretenses which form no integral part of complainants' cause of action. Under the above rule, however,

the complainant has a right to state them, and in certain suits they form the very gist of the action. Having been properly pleaded, it is for the Court to determine whether or not they form a logical and necessary portion of complainants' case. If they do, there is no doubt that the court may regard them in determining its jurisdiction. When the claim of the defendant is no longer a supposed pretense or excuse, but a specific cloud on title, evidenced by written instruments and records and specific acts, the plaintiff is unable to state his cause of action at all without alleging it. Such allegations are no longer the charging part of the bill but its very substance. They are **the "state of things" already existing "when the** action is brought." If not alleged, evidence will not be received regarding them.

> "The bill must contain every fact essential to the plaintiff's cause of action. For no evidence will be admitted to prove any fact not alleged in it."
>
> Foster's Federal Practice, section 67.
>
> Crockett v. Lee, 7 Wheat. 522.

The acts of the legislature of the State of California complained of are *prima facie* valid and a cloud on title and complainants have a right in equity to have the same removed and the claims of defendant thereunder quieted. 7 Cyc. 255, Article "Cloud on Title." Courts of equity al-

ways show the highest solicitude regarding land titles and will afford a remedy appropriate to the circumstances of each case. Sharon v. Tucker, 144 U. S. 533.

The joinder of parties in the amended bill to prevent a multiplicity of suits and to remove a common cloud on title, as well as the remedy of injunction sought in the suit, each characterize well settled forms of equitable actions and place the equitable nature of the bill beyond dispute.

Complainants claim protection under the fourteenth amendment of the Constitution of the United States, in that the legislative acts and municipal acts and ordinances pleaded, deprive, or attempt to deprive, them of their property without due process of law.

If the Complainants have the title in their lands which they allege, it is evident that a solemn act of the legislature of the State of California granting to defendant in absolute ownership the exclusive right to all the waters in the river Los Angeles from its sources to the southern boundary of the City and the right to develop and use the same at any point between the termini above given (Tr. p. 33), is an attempt to deprive Complainants of property protected by the Constitution. As a matter of fact, it has unsettled all land titles in the valley through which the Los

Angeles River runs. The matter is aggravated to such an extent by the doctrine of underground waters which defendant attaches to its claim, that, for defendant to establish its claim in its entirety, would be a practical confiscation of complainants' lands. It is not conceded that they own any water therein. The legislature even made its acts more unreasonable by omitting from the Act approved March 30, 1878, the exceptions contained in the prior acts in favor of vested rights. (Tr. p. 34.) Defendant claims every benefit of these legislative acts. It denies that complainants ever owned any of the waters in their lands. (Tr. p. 47.) Coupled with this, it attempts the disclaimer as to "vested" rights hereinbefore referred to. Having denied the vested rights, the disclaimer becomes but another way by which defendant asserts title.

The acts, ordinances and charters in favor of defendant, alleged in the bill, impair the obligation of the contracts made through and by the several patents of the United States to the predecessors in title of complainants.

This contention is supported by the fact that the patents in this suit are more than quitclaims from the government of the United States to the patentees. If the suit was between owners of Mexican or Spanish grants, each of whom held under a confirmed and patented claim, it might be that a Federal question would not arise. This situation is changed, however, when the conflict is over the power of the United States to retain in itself title formerly claimed by the pueblo and to confer it, or a portion thereof, upon subsequent patentees. To the extent that defendant denies that the respective patents of the United States conveyed to complainants' predecessors, all title vested in the United States at date of issuance, and to the extent that the state legislature attempts to confer this title on the municipality, are the obligations of the contracts between the United States and the patentees impaired.

The state legislature in dealing with the matter, has placed the state and its courts in a position in which they refuse to acknowledge or enforce the obligations of said patents, and has impaired them by dealing, as it has, with the subject matter or rights embraced therein.

The complainants are subjected to the deprivation of property rights, privileges and immunities secured to them by the Constitution and laws of the United States, under color of the Statutes of the State of California, referred to in the bill, and in violation of section 1979 title XXIV of the Revised Statutes.

The jurisdiction of the Court invoked under the above statute in some respects draws to itself all Federal questions previously considered.

The aggrieved parties have rights under the treaty, decrees of confirmation, and patents, of which they are deprived under color of the statutes of the State of California, taking from them their waters to confer them upon a political subdivision of the state. We have already referred to the fact that these acts deprive complainants of their property without due process of law, and without compensation, and to the impairment of the obligation of their contracts, with the United States, but now we shall speak of the right, privilege and immunity which they have as to the interpretation of their contracts in terms of American law. What fruit of Conquest has the United States in this matter, if the laws of Spain and Mexico survive to vex us? Not denying the benign doctrine that the general laws of a conquered country remain in force until abrogated by competent authority, we earnestly in-

sist that, under the facts pleaded in the bill, complainants have the right to read their patents in terms of the common law, to which they are accustomed, and which is to them intelligible.

Is it conceivable that the United States established a tribunal to ascertain and settle the title to private land claims in the State of California, to act in the numerous important cases presented to it, and in the end to accomplish nothing? What value is a confirmation or patent if the land held is still under the peculiar tenure of Mexico and Spain. This is not, and should not, be the case. All titles passing through the Federal Commission established by Congress emerge rejuvenated and reborn. The commons, the pastures, the woods, the waters of sunny Spain no longer survive. Competent authority has acted, and in two essentials, the title is forever divorced from the past with all its subtlety, and charm. First, as to quantity, the survey and Federal demarcation of boundaries is final and conclusive. Second, all imperfections and incompleteness of title or uncertainty of tenure, of which the former sovereign could make avail, have passed away. The specific land is "ascertained", and the quality of the holding is "settled", by the new sovereign. Any dispute between man and man thereafter concerns only a holding, the quantity and quality of which is determined and fixed. To hold oth-

erwise, would be to introduce into our land titles greater confusion that would exist if no laws bearing on the subject had been enacted. If there had been no change, our jurists would be obliged to study and understand the laws of Mexico and Spain from all standpoints, and could not admit by back-door entrance such a claim as defendant advances in this suit. There would be no Lux vs. Haggin, 69 Cal. 255, on one hand declaring that patents from the United States of public land carry with them the common law right to an innavigable stream, and Los Angeles v. Pomeroy, 124 Cal. 597, on the other hand declaring that the City of Los Angeles owns a whole river which arises on the public domain and flows through land formerly claimed by the pueblo but which claim was rejected by the sovereign, and only power competent to act in that regard. Under it, all territory would be protected and each might know his rights.

One of the most serious claims of defendant is that the laws of Mexico and Spain survive in their favor to the extent of conferring on them the right to take water for subsequently acquired and annexed territory. They not only claim that they own water for the land confirmed to them under their patent, but that they own it for new territory acquired by annexation. This, of course, removes from the claim of the city, every

vestige of certainty or fairness, and, if maintained, renders every act of the United States, in reference to the titles of the lands in dispute practically nugatory. We respectfully submit that the treaty laws and constitution of the United States protect complainants in claiming that they hold their lands by titles securing to them the waters in them, and that this suit seriously and substantially involves the construction and application of those laws.

Respectfully submitted,

C. F. McNUTT,

Solicitor for Complainants.

WARREN E. LLOYD,

Of Counsel.

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Clerk.

No. 207

Supreme Court of the United States.

OCTOBER TERM, 1905.

Robert Devine et al.,
Appellants,
vs.
The City of Los Angeles.
Appellee.

BRIEF FOR APPELLEE.

W. B. MATHEWS,
Solicitor for Appellee.

HENRY T. LEE,
J. R. SCOTT,
Of Counsel.

Parker & Stone Co., Law Printers, 238 New High St., Los Angeles, Cal.

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As the requisite diversity of citizenship does not exist here, the court has no jurisdiction of this suit unless it is one arising under the Constitution, laws or treaties of the United States; and this fact must be shown in the bill by a statement of facts in legal and logical form, such as is required in good pleading, and the jurisdiction of the Circuit Court must be made to appear from appellants' statement of their own case, and not from their statement of the nature of the appellee's claim .....27—30

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Supreme Court

OF THE

United States

October Term, 1905.

Robert Devine et al.,
Appellants,

vs.

The City of Los Angeles.
Appellee.

BRIEF FOR APPELLEE.

This is an appeal from a decree of the Circuit Court of the United States for the southern district of California dismissing a bill to remove alleged clouds from the title, and to quiet the title, of the appellants to certain lands, and the waters therein, situate in the county of Los Angeles, state of California.

STATEMENT OF THE CASE.

Appellants are 244 in number, and they own, in severalty, various tracts of land aggregating several thousand acres, located in the county of Los Angeles, state of California. Some of these lands are embraced in the Rancho San Rafael, some in the Rancho Los Felis, and some in the Rancho Providencia. The first named rancho was granted by the King of Spain, and the other two by the republic of Mexico, to the predecessors of the appellants. The titles to these ranchos were confirmed to the successors of the original grantees by the board of land commissioners, created by and acting under, the act of Congress approved March 3, 1851, entitled "An act to ascertain and settle the private land claims in the state of California", and patents to these ranchos were thereupon issued by the United States to the confirmees. [Tr. fols. 30-33, p. 24-26.]

It is alleged in the bill, that these grants conveyed the title to the waters within the lands; that the successors of the grantees, at the date of the treaty of Guadalupe Hidalgo, held the lands by a fee-simple title, and that the United States, acting in pursuance of that treaty, confirmed such title and executed grants of such lands in fee-simple absolute to the predecessors of appellants. [Tr. fols. 33, 34, p. 26-27.]

It is further alleged in the bill, that the city of Los Angeles claims to be the successor in right

and title to all of the grants made by the Spanish and Mexican governments to the Pueblo Nuestra Senora Reina de Los Angeles, and that the city filed before the board of land commissioners a claim, in virtue of the general laws of Spain, to sixteen square leagues of land, alleging that said lands had been granted to the pueblo as common lands. [Tr. fols. 34-35, pp. 27, 28.] That the board of land commissioners confirmed the title of the city to four square leagues of the land so claimed, but rejected its claim to the remaining twelve square leagues, and that, a patent was issued by the United States to the city for the land so confirmed. That said patent did not refer to the Los Angeles river, or its waters, and that it did not convey, or purport to convey, any waters of said river. [Tr. fols. 35-36, p. 28.] That said city claims the paramount right to the waters of the Los Angeles river and the river itself by virtue of grants, laws, usages and customs of the Republic of Mexico and the Kingdom of Spain made and in vogue prior to the cession of the territory embraced within the state of California to the United States of America, under the treaty of Guadalupe Hidalgo, and by virtue of certain acts of the legislature of California, referred to in the bill, and especially by virtue of an act of the legislature passed April 4, 1850, incorporat-

ing the city of Los Angeles and declaring that it

> "shall succeed to all the rights, claims, and "powers of the Pueblo de Los Angeles in re- "gard to property, and shall be subject to all "the liabilities incurred, and obligations "created, by the ayuntamiento of said "pueblo." [Tr. fols. 35-8, pp. 28-9.]

The bill further alleges that the city never procured confirmation of, and is not the owner of, any rights in the waters of the Los Angeles river other than such as passed under said grant of land confirmed by said patent, and that said act of the legislature, passed April 4, 1850, and certain further acts of the legislature and certain proceedings, acts and charters of said city, set forth in the bill, are a cloud upon the title of the appellants to their lands. [Tr. fol. 38, pp. 29, 30.]

That the Los Angeles river runs through said Providencia, San Rafael and Los Felis ranchos and thence through the city of Los Angeles; that the lands of the appellants are riparian to the stream; that underlying the lands of the appellants are percolating waters which do not constitute a part of the Los Angeles river but which by reason of the patents referred to, and mesne conveyances, belong to the several appellants as owners of said lands. [Tr. fol. 38, p. 30.]

The bill further alleges that the city claims it is the owner of the river and its waters, and

of its tributaries and the waters therein, passing through the ranchos named, and of the percolating waters in the lands of the appellants; that it has the right to take and appropriate said waters to the extent of the needs of the city and its inhabitants, and that the appellants have no right to take any of the surface waters of the river or to pump any of the percolating waters in their lands for use thereon, except in subordination to the city's alleged paramount right to take and use the same; and the bill further alleges that the city threatens and intends to institute a suit in the state courts of California to enjoin the appellants from using any of the waters pumped by them from the wells on their lands. [Tr. fols. 39, 41; pp. 31, 32.] It is further alleged in the bill that the city rests its right and claim to said river and the waters thereof, and the waters in the lands of the appellants, first: upon a construction of the treaty of Guadalupe Hidalgo, and of said act of Congress of March 3, 1851, and, *second*, upon certain acts of the legislature and certain charters of the city of Los Angeles adopted and approved in pursuance of an erroneous construction of said treaty and of said act of Congress. [Tr. fols. 41, 42; p. 32.]

That said acts of the legislature and charters of said city are: *first*, an act, approved March 26, 1874, purporting to grant to the city, in ab-

solute ownership, all the waters in the river Los Angeles, from its sources to the southern boundary of the city; also the right to develop and use all waters flowing beneath the surface in the bed of said river between said points, excepting and reserving from said grant all vested private rights to the water flowing on or beneath the surface in the bed of said river; *second*, an act, approved April 1, 1876, purporting to grant the same rights in the same terms as contained in the act of March 26, 1874; *third*, an act approved March 30, 1878, purporting to grant to the city the Los Angeles river, with powers to control the development and distribution of the waters of the river, omitting, however, the exceptions contained in the prior acts in favor of vested private rights. That said charters are: *first*, the charter of the city of Los Angeles approved by the legislature January 31, 1889, of which section 190 provides that the city shall continue in the ownership and enjoyment of all rights to the water of the river heretofore vested in it and shall have the exclusive right to all the water flowing in the river at any point between its sources and the southern boundary of the city, and shall have the ownership and right to develop and use all waters flowing beneath the surface in the bed of the river between said points. [Tr. fols. 42-46, pp. 33-35.] *Second*, amendments to said charter approved January 30, 1903, and re-enacting the

provisions of section 190 above referred to and providing for the institution and organization of a "water department" for the management and control of all waters, water rights and water works belonging to the city. [Tr. fol. 46, p. 35.]

It is further alleged that under said acts and said charter the city has asserted and assumed the right to take physical control of the Los Angeles river and its tributaries and has exercised the right of obstructing ditches and other conduits maintained by owners of land in the valley of the river above said city and of preventing the use of the waters of the river for irrigating the lands of the appellants and that said laws and charters and the exercise of said rights have resulted in the destruction of the values of said lands. [Tr. fols. 46, 47; pp. 35, 36.]

And the bill further alleges that said acts of the legislature and said charters of the city of Los Angeles are in violation of the fourteenth amendment of the constitution of the United States in that they deprive, or attempt to deprive, the appellants of their property without due process of law and to grant the same to the city of Los Angeles; that said acts and said charters impair the obligation of the contracts expressed in the patents of the United States to the lands of the appellants; and that said acts of the legislature and said charters and the assertion and ex-

ercise by the city of the right to control said river and its waters are in violation of section 1979, title XXIV of the Revised Statutes of the United States, in that the city, under color of said acts and charters, has subjected the appellants to the deprivation of property rights, privileges and immunities secured to them by the constitution of the United States. [Tr. fols. 47-48, p. 36.]

And the bill further alleges that the construction of the act of Congress of March 3, 1851, upon which the defendant city rests its right and claim to said river and to said waters is contrary to justice and equity, and erroneous, that, according to a proper construction thereof, the city was required to present to the board of land commissioners its claim to the waters of the river for confirmation, and that according to a proper construction of said act the rights of appellants to the waters of the river as well as to the waters in their lands would be secured. [Tr. fol. 49, p. 37.]

And the bill further alleges that the claims of the city to said waters are without right; that the claims and threats of the city to institute actions against the appellants and the control which it has exercised over the river and the waters thereof, and the several acts of the legislature of California and the charter of said city purporting to confer title to said river and its waters upon said city as the successor to the Mexican pueblo, cast

a cloud upon the titles of the appellants to their lands, and have, in large measure, destroyed the market values thereof.

Wherefore appellants pray:

1. That a decree be granted appellants removing the cloud cast by the city of Los Angeles upon their titles to the lands described in the bill, that the acts of the legislature of the state of California, and the charters of the city be declared invalid in respect to conferring upon the city any rights in the waters of the Los Angeles river acquired from the pueblo of Los Angeles, other than such rights as were ascertained and confirmed under the act of March 3, 1851.

2. That a decree be granted to the appellants, and each of them quieting their several titles to their lands and to the waters therein, and to the riparian right of each of them to use the waters of said river, as against the paramount title claimed by said city to have been derived from Spain or Mexico, or claimed to have been derived from or to be supported by said acts of the legislature of the state of California, or by the charter of said city; and the appellants also prayed that it be decreed that the appellants and the city have each and severally such title only derived from Spain and Mexico as was confirmed and patented to them or their predecessors by the act of Congress of March 3, 1851.

3. That a decree be granted to the appellants forever enjoining the city of Los Angeles from setting up or asserting such paramount right and title to said waters; and further enjoining said city from asserting and exercising dominion or control over said river and said waters under or by virtue of said acts of the legislature, or said charter of said city of Los Angeles. [Tr. fols. 51-53, pp. 32-40.]

The portions of the answer to the bill, which are material to the questions before the court upon this appeal, are substantially to the following effect:

It is alleged in the answer that by the terms of each of the grants to the three ranchos named in the bill, and by the laws of the government making the same, all of the waters within any of the lands embraced in said ranchos, which formed a part of or found their way into the surface or subterranean stream of the Los Angeles river, were excepted and reserved in favor of the pueblo of Los Angeles and that none of said waters were confirmed or granted by the United States to the predecessors of the appellants. [Tr. fols. 61-65, pp. 44-47.]

It is admitted in the answer that the city claims to be, and it is alleged that the city is, in fact, the successor to all the rights and grants made by the Spanish and Mexican governments to the pueblo of Los Angeles. The answer denies that

no reference was made in the patent issued by the United States to the city of Los Angeles, or in the proceedings upon which it is based, to the waters of the Los Angeles river, either by express words, or by implication, but alleges that said patent did purport to grant to the mayor and council of the city of Los Angeles all appurtenances belonging to the land therein granted, including all the waters of the river and the right to the use of the same. [Tr. fols. 65-68, pp. 48, 49.]

It is admitted in the answer that the city claims the paramount right to the waters of the Los Angeles river, by virtue of grants, laws, usages and customs of the Republic of Mexico, and the Kingdom of Spain, and the act of the legislature, approved April 4, 1850, mentioned in the bill, but the answer denies that these are the only sources of title through which the city claims, and alleges that it also claims said paramount right, by virtue of long continued use and possession of said river, and the waters thereof, for the period of more than 120 years, and by various grants and conveyances from private individuals, and by virtue of various decrees of courts of competent jurisdiction, and of the patent to the mayor and common council of the city of Los Angeles, mentioned in the bill, and also by virtue of its ownership of various tracts of land, which are ripar-

ian to said river, amounting in area to more than 4000 acres, embracing the land through which the river flows in passing through the lands included in said patent. [Tr. fol. 68, pp. 49-50.]

The answer disclaims that the city acquired, under the act of the legislature, passed April 4, 1850, any right to the Los Angeles river, or the water thereof, or any other water or right, which was at the time of the passage of said act vested in the predecessors of the appellants, or any private individual or corporation. [Tr. fol. 69, p. 50.]

The answer denies that the acts of the legislature, or the proceedings or acts or charter of the city, referred to in the bill, constitute any cloud upon the titles of the appellants, but, on the contrary, it is alleged that none of the appellants had, at the time of the commencement of the suit, or have now, any right or interest in or to the waters of the Los Angeles river, save in subordination to the paramount right of the city to take and use all of the waters of said river, to the extent of the necessities of the city, or its inhabitants. [Tr. fols. 70-71, p. 51.]

The answer alleges that all of the waters underlying the lands of appellants form and constitute a part of the Los Angeles river, and would, if not intercepted, reach the surface stream of the river, at a point above the northern boundary of

the city, and it is denied in the answer that any of said waters belong to the several appellants, or that they, or any of them, have ever had any ownership of said waters, save in subordination to the paramount right of the city to take and use said waters, so far as it and its inhabitants might need the same. [Tr. fols. 71-73, p. 52.]

It is denied in the answer that in the petition of the mayor and common council of the city of Los Angeles to the board of land commissioners for confirmation of the pueblo lands, no claim was made to the waters of the Los Angeles river, and it is alleged that the board of land commissioners, in its finding and judgment confirming the claim of the city to the pueblo lands, also confirmed its claim to the rights with respect to the waters of the river, which were possessed by the pueblo; and it is admitted that the city of Los Angeles has in the past claimed and now claims to be the owner of all of the waters of said river, and of its tributaries, from its sources of supply to the southern boundary of the city, and also of all of the waters existing in the lands of the appellants and of the waters under said lands; and the answer alleges that all of the waters in the lands of the appellants do in fact constitute a stream or watercourse, and are part of the waters of the Los Angeles river, and it is admitted that the city claims that the appellants have not any right to

pump the waters in their lands, because such pumping might ultimately have the effect of reducing the supply in the surface and subterranean river, and it is denied that they are percolating waters, and the answer further admits that the city asserts and claims the right to take said waters and appropriate the same to its use, at any time when they are needed by the city, or its inhabitants, and that the city denies the right of the appellants to pump any of the waters in their lands, except in subordination to the paramount claim and right of the city and its inhabitants to take and use said waters; but it is denied in the answer that the city claims the right to enter on the lands of any of the appellants to take or use said waters, or any part thereof, without having first obtained the right so to do, by grant from, or condemnation against, said appellants. It is admitted that the city claims the right to prevent the appellants from using the waters in their lands when the city has need of the same, but it is denied that it claims the right to prevent appellants from using said waters by entering upon their lands or by using physicial force, and it is alleged that the city claims the right to prevent the use of said waters by appellants only in the manner prescribed by the laws of the state of California, and that the city intends to enforce its rights against the appellants by means of the suit

brought by it, as alleged in the bill, in the state court, against certain of the appellants, for the purpose of enjoining them from using the waters pumped by them from their lands, and by means of other legal process, and not by any unlawful acts or physical force. [Tr. fols. 74-77, pp. 53-55.]

It is admitted in the answer that the city rests its claim to the Los Angeles river and the waters thereof, including the waters in the lands of the appellants, in part upon the treaty of Guadalupe Hidalgo, according to the manifest meaning thereof, viz: that the rights of pueblos were intended to be protected by said treaty, as well as the rights of individuals; and it is admitted that the city rests its said claim in part upon the act of Congress of March 3, 1851, according to the manifest meaning thereof, viz: that the claims of pueblos, and of municipal corporations succeeding them, to lands granted by the Spanish and Mexican governments, were entitled to confirmation, and that the confirmation thereof had the effect of confirming all water rights which were appurtenant to said lands, and that said act did not require claims for property other than lands to be presented for confirmation. [Tr. fols. 77-78, pp. 55-56.]

It is denied in the answer that the city rests its claim to the Los Angeles river, and its waters, including the waters in the lands of the appel-

lants, upon the laws of the state of California, and the ordinances and charters of the city of Los Angeles, except to the extent that the same had the effect of vesting and continuing in the city and its predecessors, such rights with respect to the waters of the Los Angeles river, as were possessed by the pueblo at the time the pueblo was dissolved and the city was incorporated, by the act of April 4, 1850, and such rights with respect to the waters of the river as might have been vested in the state of California upon its admission to the Union. [Tr. fols. 79-80, pp. 56-57.]

The answer denies that the city ever claimed, and alleges that it expressly disclaims, that there was granted by said acts of the legislature, or by the city charter, to the mayor and common council of the city of Los Angeles any right to develop waters percolating under the bed of the Los Angeles river, or elsewhere, which at the time of the passage of said acts, or at the time of the adoption of said charter was vested in the appellants, or any of them, or in their predecessors, or in any private individual or corporation.

The answer denies that the legislative acts and the ordinances and charters mentioned in the bill were adopted because or in pursuance of any erroneous construction of the treaty of Guadalupe Hidalgo, or of the act of Congress of March 3, 1851, but alleges, that the same were adopted with the intention of asserting that the city of

Los Angeles was the owner of all the rights possessed by the pueblo of Los Angeles to the waters of the Los Angeles river, and not with the intention of depriving the appellants, or any of them, or any of their predecessors, or any other private individual or private corporation, of any right in respect to the waters of said river, and denies that by any of said acts of the legislature mentioned in the bill, or by the charter of the city or the amendments thereof, there was intended to be granted to the city any right with respect to the water, flowing in said river or beneath the surface of the bed thereof, which was then vested in the appellants, or any of them, or any of their predecessors, or any private individual or private corporation, or that by any of said acts it was intended to divest any private person or corporation of any vested private rights in said waters, or that any of said acts have ever been construed by any court in the state of California to so divest any such private vested rights, but on the contrary it is alleged in the answer that it has been determined by the Supreme Court of California that said acts did not have such effect. [Tr. fols 80-82, pp. 57-59.]

The answer denies that the city has ever interfered with the appellants in the use of the waters of the river or its tributaries, or the waters of said valley, except when such waters were lo-

cated on or in the lands of the city or on or in lands on which the city had acquired the right of entry to divert and use said waters, except when the city has interferred with such use by judgments of court obtained by due process of law. And denies that the city has ever assumed or asserted the right to take physical control of any waters on or in the lands of the appellants. The answer disclaims that the acts or charters referred to in the bill grant to the city the right to take physical control of property belonging to appellants.

The answer denies that the acts of the legislature and the ordinances and charters of the city of Los Angeles, mentioned in the bill, or any of them, are in violation of the fourteenth amendment to the constitution of the United States, or that any of said acts, ordinances or charters impair the obligation of the several contracts made through and by the patents of the United States to the predecessors of the appellants, or that any of the acts of the legislature including the acts, charters, and ordinances of the city of Los Angeles, mentioned in the bill, are in violation of section 1979, title XXIV, of the Revised Statutes of the United States, or that the city of Los Angeles, under color of any of said statutes or of the charter or ordinances mentioned in said bill, or otherwise, has subjected or caused to be subjected said appellants, or any of them, to the de-

privation or deprivations of property rights, privileges or immunities secured to them by the constitution or laws of the United States. [Tr. fols. 88-89, pp. 61-63.]

The answer denies that the sound and reasonable or proper construction of the act of March 3, 1851, will secure the appellants in any riparian rights to the waters of the Los Angeles river, or the waters within their land, but, on the contrary, the answer alleges that, according to the proper construction of said act, the confirmation and patent therein provided for only had the effect of confirming to the confirmee and patentee the lands therein described, but subject to all the easements and servitudes imposed thereon by the laws of Spain and Mexico in favor of third parties, including the rights to the waters of unnavigable streams which were attached to other lands, or belonged to pueblos, or private individuals other than the grantees. And where such water rights were appurtenant to lands granted by the Spanish and Mexican governments and confirmed and patented under said act of Congress, such water rights passed by such patents, and a claim for such water rights was not required by such act to be confirmed or patented. [Tr. fols. 89-93, pp. 63-66.]

It is admitted in the answer that the city claims that the appellants have no right to the waters of the Los Angeles river, including the waters in

other lands, as against the city and its inhabitants, when the city shall determine that it needs said waters, and that the city claims that the use by the appellants of such waters is at the sufferance of the city, and may be prohibited by the city at any time, and that the city is threatening to institute suits against the appellants for the purpose of enforcing such claims, but it is denied that any and all said claims or any dominion or control which the city has exercised over the river and the waters thereof has cast any cloud upon the several titles of appellants to their lands or affected the market value or saleability of such lands. [Tr. fols. 95-96, pp. 66, 67.]

It is alleged in the answer that in the year 1781 a pueblo was founded on the site of the present city of Los Angeles by the government of the kingdom of Spain and that, according to the laws and regulations of that country, said pueblo became entitled to the sole and exclusive right in perpetuity to the absolute ownership of all the waters of the Los Angeles river, whether flowing upon or beneath the surface of the ground; that said river then rose and now rises several miles above the site of the pueblo and ran and still runs down through said site to the lands now embraced within the city of Los Angeles; that during the whole of the occupation and control of said pueblo by the Spanish and Mexican governments the municipal authorities at all times

exercised control of and claimed the exclusive right to use all the waters of said river, and that right was during all of said time recognized and acknowledged by the owners of all of the lands bordering on said river, including the predecessors of the appellants; that ever since the occupation and control of said pueblo by the United States and by the state of California the municipal authorities of the city have exercised the same rights over and to the waters of the river as were previously exercised and claimed by the authorities of the pueblo, and that such control and rights were exercised and claimed for the purpose of irrigation and for the domestic and other uses of said pueblo and said city and the inhabitants thereof.

It is further alleged in the answer that within one year after the foundation of the pueblo the municipal authorities thereof constructed a system of irrigation works and conveyed the waters of the river to and upon lands in the pueblo and that thereafter from time to time other lands of the pueblo were brought under irrigation so that all of said waters were diverted from said river and used for such irrigation during a period of many years prior to the conquest of California by the United States, and that, from and after such conquest the same use was made of the waters of the river for the irrigation of lands within the

pueblo and for domestic use of its inhabitants up to the time of the passage of the act of April 4, 1850, incorporating the city of Los Angeles; that from and after that time the municipal authorities of said city continued to construct additional works for the more economical diversion and distribution of such waters for use in irrigating lands within said city, and for domestic use of the inhabitants thereof; that within the past 18 years nearly all of said irrigable lands have been divided into building lots and covered with houses, so that all of the waters previously used for the irrigation of said lands excepting the portion thereof which has been diverted by the appellants within the last five years, have been used by the city and its inhabitants for purposes other than for irrigation, and all of the waters of said river during the dry season of each year, extending from the first day of May to the first day of November, and a great portion of said waters during the rest of the year have been needed for said uses. That the population of said city is not less than 180,000 people and is increasing at the rate of more than 10,000 per year, and that the city has no other source of water supply except said river. [Tr. fols. 103, 106, pp. 72-74.]

It is alleged in the answer that, with certain exceptions referred to therein, the pueblo of Los Angeles, from the time of its foundation in the year 1781, up to the incorporation of the pueblo

as a city by the act of 1850, and the said city from that time until now has continuously, exclusively and adversely to the whole world used all of the waters of the Los Angeles river under a claim of ownership of said waters, the exceptions referred to being claims made by certain persons at various times of rights to the use of the waters of the river and of affluents thereof which have been litigated and decided by the state courts in favor of the city, and it is further alleged that within the past twelve years certain owners of lands in which flowed underground waters of the river have set up a claim that said waters were not a part of the river and that they were entitled to take and appropriate said underground waters for their own use, and that, in pursuance of such claims, great numbers of said parties, including some of the appellants have constructed wells and engaged in pumping large quantities of said water, thereby diminishing the surface flow of the river, and that it is for the purpose of preventing such diminution that the city is bringing and contemplates bringing the actions against appellants which are referred to in the bill; that within the past five years such abstraction of these underground waters did not interfere with the supply of water required by the city, but within the past three years the amount of diversion by means of said wells has increased so much and the needs of the city and its inhabitants have also

so greatly increased that the waters of the river which reached the surface stream thereof and the underground diversion works of the city have not been sufficient to supply it and its inhabitants with the water needed by them. [Tr. fols. 106-110, pp. 74-76.]

It is alleged in the answer that the city in its corporate name or in the name of the board of water commissioners is the owner of numerous tracts of land which are riparian to the river, and which are particularly described in the answer. [Tr. fols. 110-112, pp. 76-78.] It is alleged in the answer that in the year 1879, two actions were commenced by predecessors of some of the appellants against the city of Los Angeles claiming the right to divert and use waters of the river and both of said actions were finally determined by the Supreme Court of the state of California against the plaintiffs and in favor of the city, and it is alleged that appellants who are successors in interests of the plaintiffs in the suits last mentioned are by said judgments estopped to deny that the city is the owner of a paramount right to use so much of the waters of the Los Angeles river as it and its inhabitants may need. [Tr. fols. 112-125, pp. 78-87.]

Thereafter, the city of Los Angeles, by its counsel, moved the court to dismiss this cause on the ground that it appeared from the bill of com-

plaint and the answer thereto that the court had no jurisdiction of said cause. And on the hearing of said motion it was by the court adjudged and decreed that the bill of complaint herein be dismissed for want of jurisdiction. From this decree the appellants have appealed to this court.

ARGUMENT.

As the requisite diversity of citizenship does not exist, the court has no jurisdiction of this suit unless it is one arising under the constitution, laws or treaties of the United States:

> "* * * the circuit courts of the United "States shall have original cognizance, con- "current with the courts of the several states, "of all suits of a civil nature * * * aris- "ing under the constitution or laws of the "United States, or treaties made, or which "shall be made under their authority." [25 St. at L. 433, cap. 866.]

The rule has been repeatedly laid down by this court that a case may be said to arise under the constitution, a law or a treaty of the United States, whenever its correct decision depends upon the construction of the constitution or of such law or treaty.

Cohens v. Virginia, 6 Wheat. 379;

Osborne v. Bank of the United States, 9 Wheat. 822;

Tennessee v. Davis, 100 U. S. 264.

In the case of Bankers Casualty Co. v. Minn. St. P. &c. Ry., 192 U. S. 371, 381, the court said:

> "But it is contended that jurisdiction also "rested on the ground that the case arose un- "der the constitution or laws of the United "States, and that must be tested by the set- "tled rule that a suit does not so arise unless "it really and substantially involves a dis- "pute or controversy as to the effect or con- "struction of the constitution or some law or "treaty of the United States, upon the de- "termination of which the result depends."
>
> (Citing cases.)
>
> See also City of New Orleans v. Benjamin, 153 U. S. 411.

We submit that the bill does not present an actual and substantial controversy as to the effect or construction of the constitution, or of any law or treaty of the United States, on the determination of which the recovery depends, and, therefore, does not make a case within the jurisdiction of a Federal court.

The bill must disclose a federal question by a statement of facts in legal and logical form, such as is required in good pleading.

A mere general allegation that the suit is one arising under the constitution and laws of the United States is not sufficient to confer jurisdic-

tion. The jurisdictional allegations must be specific. As was said by Chief Justice Waite, writing the opinion in the case of Gold Washing and W. Co. v. Keyes, 96 U. S. 199, 201:

> "It is well settled that in the courts of the "United States the special facts necessary "for jurisdiction must, in some form, appear "in the record. * * * Before, therefore, "a circuit court can be required to retain a "cause under their jurisdiction, it must, in "some form, appear upon the record, by a "statement of facts, 'in legal and logical "form', such as is required in good plead- "ing (1 Chit., Pl. 213), that the suit is one "which 'really and substantially involves a "dispute or controversy' as to a right which "depends upon the construction or effect of "the constitution, or some law or treaty of "the United States."

Speaking of its appellate jurisdiction, this court said, in the case of City of Lampasas v. Bell, 180 U. S. 276, 282:

> "This court has only jurisdiction by ap- "peal or writ of error directly from the cir- "cuit court in certain cases, one of which is "when the constitution or law of a 'state is " 'claimed to be in contravention of the con- " 'stitution of the United States.' Sec. 5 of "the Judiciary Act of 1891, 26 Stat. at L. "828, Chap. 517. But the claim must be real "and substantial. A mere claim in words is "not enough. We said by the Chief Justice "in Western U. Teleg. Co. v. Ann Arbor R. "Co., 178 U. S. 239, 44 L. Ed. 1052, 20 Sup. "Ct. Rep. 867: 'When a suit does not really " 'and substantially involve a dispute or con-

" 'troversy as to the effect or construction of
" 'the constitution or laws of the United
" 'States, upon the determination of which
" 'the result depends, it is not a suit arising
" 'under the constitution or laws. And it
" 'must appear on the record, by a statement
" 'in legal and logical form, such as is re-
" 'quired in good pleading, that the suit is
" 'one which does really and substantially
" 'involve a dispute or controversy as to a
" 'right which depends on the construction
" 'of the constitution or some law or treaty
" 'of the United States, before jurisdiction
" 'can be maintained on this ground.' " (Citing cases.)

We will now proceed to consider the question whether the bill, by proper allegations, makes a case within the jurisdiction of the Circuit Court

The jurisdiction of the court must be made to appear from complainants' statement of their own claim, and not from their statement of the nature of the defendant's claim.

While the appellants, in the prayer of the bill, ask for a decree quieting their title to the lands described in the bill, it is evident that they did not intend by their pleading to state a cause of action to quiet title under the old chancery practice, under which, as stated in Boston &c. Mining Co. v. Montana Ore Co., 188 U. S. 632:

"There are two distinct kinds or classes of "bills, of peace, or bills to quiet title, the one "brought for the purpose of establishing a "general right between a single party and "numerous persons claiming distinct and in-"dividual interests; the other for the purpose "of quieting complainant's title to land "against a single adverse claimant. In the "second class the suit can be maintained by "a party in possession against a single de-"fendant ineffectually seeking to establish "a legal title by repeated actions of eject-"ment, and in such case it is necessary to "aver that the title of complainant has been "established by at least one successful trial "at law before equity will entertain juris-"diction. 3 Pom. Eq. Jur. 2d ed. sec. 1394, "note 3, and 1 Pom. Eq. Jur. sec. 246."

It is apparent that this bill does not come under either of these classes, but was intended to be framed under the statute of the state of California, which provides that "an action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim." (Section 738, Code of Civil Procedure.) This statute is similar to statutes in many other states, upon the same subject, and it has the effect of enlarging the ancient jurisdiction of courts of equity in respect to suits to quiet title. Wehrman v. Conklin, 155 U. S. 314, 325. These enlarged equitable rights are administered in Federal courts, so far as they do not conflict

with any provision of the constitution or with the statutes of the United States.

> "Whilst it is true that alterations in the "jurisdiction of the state courts cannot af- "fect the equitable jurisdiction of the Cir- "cuit Courts of the United States so long as "the equitable rights themselves remain, yet "an enlargement of equitable rights may be "administered by the Circuit Courts as well "as by the courts of the state."

Broderick's Will, 21 Wall. 503;
Holland v. Challen, 110 U. S. 15, 26;
United States v. Wilson, 118 U. S. 86;
Frost v. Spitley, 110 U. S. 557.

Section 738 of the Code of Civil Procedure of California, was copied from the old Practice Act of that state (Laws of California, 1851, pp. 92, 93) in reference to which the Supreme Court of California, in the case of Head v. Fordyce, 17 Cal. 151, said:

> "The act was intended to embrace every "description of claim whereby the plaintiff "might be deprived of the property, or its "title clouded, or its value depreciated, or "whereby the plaintiff might be incommoded "or damnified by the assertion of an out- "standing title, already held, or to grow out "of the adverse pretension."

It is, therefore, held by the Supreme Court of California, that

> "In an action under section 738 of the "Code of Civil Procedure, it is not necessary

"to allege in the complaint the nature of the "estate or interest claimed by the defend- "ant."

People v. Center, 66 Cal. 551, 562.

To the same effect

Castro v. Barry, 79 Cal. 443.

"The only purpose of the averment of an "adverse claim is to notify the defendant of "the nature of the action, and that he is re- "quired to set forth and allege any adverse "title he may claim to have, or to disclaim "any such adverse title, either expressly, or "by default."

Mining Co. v. Mining Co., 83 Cal. 589, 609.

We submit, therefore, that the allegations of the bill, that the adverse claims of the city to the waters of the Los Angeles river, and the waters in the lands of the complainants, are based upon an erroneous construction of the treaty of Guadalupe Hidalgo, the provisions of the act of March 3, 1851, and certain acts of the legislature of the state of California, and ordinances and charters of the city of Los Angeles, mentioned in the bill, are unnecessary to a statement of appellants' case in a suit to quiet title to such property under the enlarged equitable jurisdiction of the Circuit Court. These allegations are plainly intended to raise a Federal question where none would otherwise appear, and they are, therefore, improper under the rule, declared in the following de-

cisions, that the jurisdiction of the court must be made to appear from the plaintiff's statement of his own claim, and not from his statement or anticipation of the nature of the defendant's claim.

"Even under the act of 1875, the jurisdic-
"tion of the Circuit Court of the United
"States could not be sustained over a suit
"originally brought in that court, upon the
"ground that the suit was one arising under
"the constitution, laws or treaties of the
"United States, unless that appeared in the
"plaintiff's statement of his own claim. This
"was distinctly adjudged, and the reasons
"clearly stated, in Metcalf v. Watertown,
"128 U. S. 586, 589." * * *

"* * * the only reference to the consti-
"tution or laws of the United States is the
"suggestion that the defendants will contend
"that the law of the state under which the
"plaintiff's claim, is void, because in contra-
"vention of the constitution of the United
"States; and by the settled law of this court,
"as appears from the decisions above cited,
"a suggestion of one party that the other
"will or may set up a claim under the con-
"stitution or laws of the United States, does
"not make the suit one arising under that
"constitution or those laws."

Tennessee v. Union and Planters Bank, 152 U. S. 454.

"It would be wholly unnecessary and im-
"proper in order to prove complainant's
"cause of action to go into any matters of
"defense which the defendants might pos-
"sibly set up, and then attempt to reply to
"such defense, and thus, if possible, to show

"that a Federal question might or probably "would arise in the course of the trial of the "case. To allege such defense and then "make an answer to it before the defendant "has the opportunity to itself plead or prove "its own defense is inconsistent with any "known rule of pleading, so far as we are "aware, and is improper.

"The rule is a reasonable and just one that "the complainant in the first instance shall "be confined to a statement of its cause of "action, leaving the defendant to set up in "his answer what his defense is * * *"

* * * * * * * * * * * *

"The cases hold that to give the Circuit "Court jurisdiction the Federal question "must appear necessarily, in the statement of "the plaintiff's cause of action, and not as "mere allegations of the defense which the "defendants intend to set up or which they "rely upon. Third Street Railway Com-"pany v. Lewis, 173 U. S. 457."

Boston &c. Mining Co. v. Montana Ore Co., 188 U. S. 632.

"Hence, it has been settled that a case can-"not be removed from a state court into the "Circuit Court of the United States on the "sole ground that it is one arising under the "constitution, laws or treaties of the United "States, unless that appears by plaintiff's "statement of his own claim; and if it does "not so appear, the want of it cannot be sup-"plied by any statement of the petition for "removal or in the subsequent pleadings. "And moreover that jurisdiction is not con-"ferred by allegations that defendant intends "to assert a defense based on the constitu-"tion or a law or treaty of the United States,

"or under statutes of the United States, or "of a state, in conflict with the constitution. "Tennessee v. Union & Planters Bank, 152 "U. S. 454; Chappell v. Waterworth, 155 U. "S. 102; Walker v. Collins, 167 U. S. 57; "Sawyer v. Kockersperger, 170 U. S. 303; "Florida Central & Peninsular Railroad v. "Bell, 176 U. S. 321."

Arkansas v. Kansas & Texas Coal Co., 183 U. S. 185, 188.

"It has been several times held by this "court that the plaintiff, if the statement of "his own claim does not disclose a Federal "question, cannot create jurisdiction in a "Circuit Court by anticipating the defend- "ant's claim, and by alleging that the de- "fendant will set up a defense under some "law of the United States."

Florida Central &c. Railroad v. Bell, 176 U. S. 321.

While the suit set up in the bill is, as we view it, merely one to quiet the title of the appellants against the adverse claims of the city of Los Angeles, and is cognizable only in the state courts, yet appellants have endeavored to give the case a federal aspect for the purposes of jurisdiction by alleging that the claims of the city to the waters of the river and in their lands are made under the treaty of Guadalupe Hidalgo, the act of Congress of March 3, 1851, the acts of the legislature and the charters of the city, described in the bill, and that * * * "said claims of the

said city to the exclusive paramount title of the waters, * * * and the threat it is making to institute action against your orators, and the dominion and physical control which it has exercised over the said river and the waters thereof, * * * * and the said several acts of said legislature of California, and the said charters of defendant, purporting to confer upon said defendant the title of said river and its waters and declaring and asserting that such title to said river and its waters is vested in said defendant as successor to the Mexican pueblo have, and do, cast a cloud upon the several titles of your orators to the said lands." [Tr. fols. 50, 51, p. 38.]

And, in the prayer of the bill the appellants ask that a decree be granted: "* * * removing "cloud cast by the said defendant City of Los An- "geles upon the titles of your orators to their "lands above described, as hereinbefore alleged, "and that the acts of the legislature of the state of "California and the charters of said defendant "city herein set forth be decreed and declared in- "valid in respect of conferring upon said defend- "ant city any rights to or interest in the waters "of the Los Angeles river acquired by the pueblo "of Los Angeles under the laws, usages or cus- "toms of Mexico or Spain other than such as "have been ascertained and confirmed under the "act of Congress of March 3, 1851." [Tr. fol. 52, p. 39.]

We submit that the bill discloses an entire misconception, on the part of the appellants, of the nature and purpose of a suit to remove a cloud, in two particulars; *first*, such a suit is aimed at an instrument or record and not at mere threats, claims, or pretensions, and, *second*, it is not available for the purpose of having a statute canceled, or adjudged to be void.

The Supreme Court of California, in Castro v. Barry, 79 Cal. 443, 446, speaking of this remedy, says:

> "Suits to have an instrument canceled or "adjudged to be void were quite common in "the old chancery practice, and constituted "one of the applications of the principle *quia* "*timet*. (2 Story's Eq. Jur., Sec. 701.) This "suit is preserved by the Civil Code which "has the following provisions on the subject:
>
> "'Sec. 3412. A written instrument, in re-"'spect to which there is a reasonable appre-"'hension that, if left outstanding, it may "'cause serious injury to a person against "'whom it is void or voidable, may, upon his "'application, be so adjudged and ordered "'to be delivered up or canceled.
>
> "'Sec. 3413. An instrument, the invalid-"'ity of which is apparent upon its face, or "'upon the face of another instrument which "'is necessary to the use of the former in "'evidence, is not to be deemed capable of "'causing injury, within the provisions of "'the last section.'"

And, in the case last cited, the court, referring to a suit to remove a cloud and a suit to quiet title, says:

"In the former case the proceeding is "aimed at a particular instrument, or piece "of evidence, which is dangerous to the "plaintiff's rights, and which may be or- "dered to be destroyed in whosesoever hands "it may happen to be. While in the latter, "the proceeding is for the purpose of stop- "ping the mouth of a person who has assert- "ed or is asserting a claim to the plaintiff's "property, whether such claim be founded "upon evidence or utterly baseless. It is not "aimed at a particular piece of evidence, but "at the pretensions of an individual."

"A bill will not lie to remove a mere verbal "claim or oral assertion of ownership in "property as a cloud upon the title. Such "clouds upon title as may be removed by "courts of equity are instruments or other "proceedings in writing which appear upon "the records, and thereby cast doubt upon "the validity of the record title."

Parker v. Shannon, 121 Ill. 452.

To Mr. Justice Field is generally attributed the credit of accurately defining the true test for determining whether an instrument casts a cloud upon title. In the case of Pixley v. Huggins, 15 Cal. 127, 133, he said:

"The true test * * * is this: Would "the owner of the property, in an action of "ejectment brought by the adverse party, "founded upon the deed, be required to offer "evidence to defeat recovery. If such proof "would be necessary the cloud would exist; "if the proof would be unnecessary no shade "would be cast by the presence of the deed. "If the action would fall of its own weight,

"without proof in rebuttal, no occasion could "arise for the equitable interposition of the "court; as in the case of a deed void upon its "face, or which was the result of proceed- "ings void upon their face, requiring no ex- "trinsic evidence to disclose their illegality. "* * * So too, a conveyance not falling "in the chain of title, as from one who never "had any connection with the property, "would not constitute a cloud upon such title. "No action could be supported upon such a "conveyance, even in the absence of rebut- "ting proof, any more than upon so much "waste paper."

In the opinion the following language of Chancellor Walworth in Van Doren v. the Mayor, etc. of N. Y., 3 Paige 338, is quoted with approval:

"That can never be considered a legal "cloud, which cannot for a moment obstruct "the unaided rays of legal science, when they "are brought to bear upon the supposed ob- "scurity."

It is a necessary corrollary of this rule that a suit to remove a cloud is not available for the purpose of raising the question of the constitutionality of a statute, or of having an unconstitutional statute adjudged to be void.

The case of Burr v. Hunt, 18 Cal. 303, was a suit to enjoin a sale of plaintiff's property for taxes. The constitutionality of an act of the legislature, purporting to validate the assessment under which the sale was threatened,

was questioned; but the court held such a question could not arise in a suit to enjoin a tax sale on the ground that such sale would create a cloud upon the plaintiff's title, saying:

> "If the act of 1859 be unconstitutional, it "creates no cloud upon the title; if it be not "and the act embraces and validates this al-"leged assessment of 1857, then there is no "pretense for an injunction."

With reference to a bill to restrain the collection of a tax on ground of its illegality, Mr. Justice Hunt, in the case of Hannewinkle v. Georgetown, 84 U. S. 547, 548, said:

> "It has long been held also, that there "exists no cloud upon the title which jus-'tifies the interference of a court of equity, "where the proceedings are void upon their "face, that is, the same record which must be "introduced to establish the title claimed, "will show that there is no title."

It is manifest that, by the force of the terms used, a statute, which is alleged to be unconstitutional, cannot, at the same time, be alleged to constitute a cloud upon a title. If it is unconstitutional, it is a nullity. "An unconstitutional law is void and is no law." Siebold's case, 100 U. S. 376.

This is a general rule of equity in suits to remove a cloud on a title and it is embodied in sections 3412 and 3413, of the Civil Code of California, which provide substantially that where an

instrument is void on its face or upon the face of another instrument which is necessary to the use of the former in evidence, it is not to be deemed capable of creating a cloud.

In Williams v. Corcoran, 46 Cal. 553, it was held that where a statute, under which a tax was levied, was in violation of the state constitution, a deed, based on a sale made for such taxes, would be void on its face, and would, therefore, not constitute a cloud on a title.

So in this case, the statutes and charters which are declared in the bill to be obnoxious to the constitution of the United States, if they are subject to that objection, are void on their face, and therefore do not constitute a cloud on the title of appellant.

The question of the repugnancy of the acts of the legislature and the charters of the city to the Federal Constitution is primarily for the state courts.

According to the allegations of the bill, the titles of the appellants to their property were derived from Spain and Mexico, by virtue of grants to their predecessors from those countries, which were confirmed by the board of land commissioners. The state of California, therefore, is not in the line of such titles, so that the acts of the legislature, and the charters of the city, complained of, manifestly do not have the effect of depriving ap-

pellants of their property, or, as pointed out above, of even clouding their titles. Neither they, nor their predecessors, are named in any of those acts or charters, and the language employed therein does not disclose any purpose to take the rights of third persons in the Los Angeles river and confer them upon the city. The most that can be said of those acts and charters is that the state, dealing with its creature, the city, has conferred upon it such rights in respect to the waters of the river as at the time of their adoption, may have been vested in the state. Hence, we contend that the question of the repugnancy of these acts or charters to the impairment clause or the deprivation clause of the constitution, does not actually or necessarily arise under the allegations of the bill.

> "The judicial power extends to all cases in "law or equity, arising under the constitu- "tion, but these are cases actually, and not "potentially, arising, and jurisdicton cannot "be assumed on mere hypothesis."
>
> New Orleans v. Benjamin, 153 U. S. 411, 424.

> "The proposition is wholly untenable that, "before the state courts in which a case "properly pending can proceed to adjudica- "tion in the regular and orderly administra- "tion of justice, the courts of the United "States can be called on to interpose on the "ground that the state courts might so de-

"cide as to render their final action uncon-
"stitutional.

"Moreover the state courts are perfectly
"competent to decide Federal questions aris-
"ing before them and it is their duty to do so.
"Robb v. Connolly, 111 U. S. 624, 637; Mis-
"souri Pacific Railway Co. v. Fitzgerald,
"160 U. S. 556, 583.

"And, we repeat, the presumption is in
"all cases that the state courts will do what
"the constitution and laws of the United
"States require. Chicago & Alton Railroad
"v. Wiggins Ferry Co., 108 U. S. 18;
"Shreveport v. Cole, 129 U. S. 36; Neal v.
"Delaware, 103 U. S. 370, 389; New Or-
"leans v. Benjamin, 153 U. S. 411, 424.

"If error supervenes the remedy is found
"in section 709 of the Revised Statutes.

"The present case strikingly illustrates the
"applicability of these well-settled principles.
"The principal injunction was dissolved by
"the court by which it was granted, and the
"city's suit was dismissed by the highest
"judicial tribunal of the state.

"We regard this bill as an attempt to
"evade the discrimination between suits be-
"tween citizens of the same state and suits
"between citizens of different states, estab-
"lished by the constitution and laws of the
"United States, by bringing into the Circuit
"Court controversies between citizens of the
"same state, an evasion which it has been the
"constant effort of Congress and of this
"court to prevent, Bernards Township v.
"Stebbins, 109 U. S. 341, 353; Shreveport v.
"Cole, 129 U. S. 36, 44; and are of opinion

"that it should have been dismissed for want "of jurisdiction."

Defiance Water Co. v. Defiance, 191 U. S. 184, 193.

In this connection we take the liberty of saying that the city of Los Angeles never has claimed that any of such acts of the legislature or charters divested the appellants, or their predecessors, or any other riparian owners on the Los Angeles river, of any right which they may have had to the waters of that stream, and the Supreme Court of California has never decided that such acts or charters had that effect. On the contrary, that court, in the case of Vernon Irrigation Co. v. City of Los Angeles, 106 Cal. 253, referring to the acts of the legislature and the provisions of the charters of the city, relating to the rights and powers of the city in respect to the waters of the river, held:

"It will hardly be claimed that the legisla- "ture could grant to the city the water of the "river so as to deprive riparian owners of "it."

The case of Hooker v. Los Angeles, 188 U. S. 314, was a suit brought by the city to condemn a tract of land riparian to the Los Angeles river, and embraced in one of the ranchos described in this bill. It originated in the Superior Court of the county of Los Angeles, state of California,

under the title of City of Los Angeles v. Pomeroy, was appealed to the Supreme Court of that state, and came to this court on writ of error. It involved the question of the respective rights of the city and of the defendants therein, to the waters of the Los Angeles river. The acts of the legislature, referred to in the bill, were admitted in evidence at the trial, for the purpose of showing the succession of the city of Los Angeles to the property rights of the pueblo of Los Angeles. On the appeal to the Supreme Court of California, that court said:

> "No act of the legislature * * * can "diminish or change the rights of the defend- "ants in these lands derived from their "predecessors, the Mexican and Spanish "grantees."
>
> City of Los Angeles v. Pomeroy, 124 Cal. 597, 637.

On page 638, *et seq.*, of the same report, the Supreme Court of California declared:

> "The defendants hold their lands as suc- "cessors to several Spanish and Mexican "grantees, under patents from the United "States based upon the original grants. They "claim that, even conceding the rights of the "pueblo and the city's succession to those "rights (a concession which they make only "for the purposes of the argument on this "point), they are still, by virtue of their "ownership of the lands in question, entitled "to the exercise of full riparian rights, ex- "cept so far, and so far only, as those rights

"are impaired by the paramount rights of the "pueblo as they existed before the change of "flag and without any legislative additions "thereto.

"This claim, we think, is clearly just. The "legislature of California could grant noth- "ing to the city of Los Angeles which be- "longed to others, and the rights of the city, "as successor to the pueblo, in the lands of "riparian proprietors holding under Mexi- "can and Spanish grants, cannot exceed the "rights of the pueblo itself."

On writ of error this court held in reference to the acts of the legislature in question, as follows:

"And so as to certain statutes of the state "of California, which declare that the city "of Los Angeles is vested with the para- "mount right to the surface and subterra- "nean water of the Los Angeles river. Those "statutes were admitted in evidence mere- "ly to show that the city was the successor "of the ancient pueblo. The court held that "the right of the city of Los Angeles to take "from the Los Angeles river all of the wa- "ters of the river to the extent of its reason- "able domestic and municipal needs was "based on the Spanish and Mexican law, "and not on the charters of the city of Los "Angeles. The validity of the statutes, on "account of repugnancy to the Federal con- "stitution was not drawn in question in the "trial court nor in the Supreme Court of the "state, and both courts held that they neither

"granted to the city nor took away from "plaintiffs in error any rights or property."

Hooker v. Los Angeles, 188 U. S. 314, 319.

Under these circumstances, we submit that there is no possible excuse for the attempt of the appellants to drag into a Federal court the question of the repugnancy of the acts of the legislature, or the charters of the city, to the deprivation clause, or to the impairment clause, of the constitution of the United States. Not only may the presumption be indulged in this case that, if such question be submitted to the state tribunals, "they "will do what the constitution and laws of the "United States require," but the decisions of the highest court of California in the cases above cited affords positive assurance of that fact.

Section 1979, Title XXIV, Revised Statutes of the United States, has no application to suits of this nature.

This court, in the case of Holt v. Indiana Manufacturing Company, 176 U. S. 68, speaking of the sixteenth clause of section 629, the twelfth clause of section 563, and section 1979, of the Revised Statutes of the United States, said:

"All these provisions were brought for- "ward from the act of April 20, 1871, en- "titled 'An act to enforce the provisions of " 'the Fourteenth Amendment to the Consti-

"'tution of the United States, and for other "'purposes.' 17 Stat. 13, c. 22.

"Assuming that they are still in force, it "is sufficient to say that they refer to civil "rights only and are inapplicable here.

"If state legislation impairs the obligation "of a contract, or deprives of property with- "out due process of law, or denies them the "equal protection of the laws, as asserted by "counsel in respect of the statutes of Indiana, "remedies are found in the first section of "the act of August 13, 1888, 25 Stat. 433, c. "866, giving to the Circuit Court jurisdic- "tion of all cases arising under the constitu- "tion and laws of the United States; and in "sec. 709 of the Revised Statutes, which "gives a review on writ of error to the judg- "ments of the state courts whenever they "sustain the validity of a state statute or of "an authority exercised under a state, al- "leged to be repugnant to the constitution or "laws of the United States. Carter v. Green- "how, 114 U. S. 317; Pleasants v. Green- "how, 114 U. S. 325."

We believe that no further citation of authority is necessary upon the point, that section 1979, Revised Statutes, does not authorize any proceeding for the redress of the violation of rights protected by the impairment clause, or the deprivation of property clause of the constitution; and, if any federal question at all arises in this case, which we deny, it must be one arising under one or the other of these clauses.

The controversy between the city and the appellants, presented by the bill, concerning the ownership of the waters of the Los Angeles river and the waters in the lands of the appellants, does not involve any question of which Federal Courts have jurisdiction.

The bill shows that the appellants deraign title to their lands from grantees of the Spanish and Mexican governments, under grants confirmed to the successors of the original grantees by the board of land commissioners appointed under the act of Congress of 1851; nd the bill alleges that, as owners of such lands, the appellants are also owners of all of the waters existing therein. It is further shown in the bill that the city of Los Angeles claims to be the successor of the pueblo of Los Angeles, and to be the owner of the paramount right to the use of all of the waters of the Los Angeles river, including the waters in the lands of the appellants, so far as the same may be needed from time to time for the purpose of supplying the city and its inhabitants, under and by virtue of the laws of Spain and Mexico, the treaty of Guadalupe Hidalgo, the act of Congress of March 3, 1851, and certain acts of the legislature of the state of California and the charter of the city.

It thus appears that the title of the appellants, which they seek by the bill to have quieted and

cleared of clouds, is derived from Spanish and Mexican grants, made prior to the conquest of the territory of California, and subsequently confirmed by the United States. So that questions as to the nature and extent of the title or rights of the appellants in these lands, and whatever appertained thereto, are questions of state or local law, cognizable only in the state courts.

That the laws of California under Spanish and Mexican rule remained in force after the conquest, as part of the law of the state, is well settled by the decisions of this court.

> "The laws of a conquered or ceded coun-
> "try remain in force until altered by the new
> "sovereign".
>
> Mitchell v. United States, 9 Pet. 711, 749.

> "A cession of territory is never under-
> "stood to be a cession of the property be-
> "longing to its inhabitants. The king cedes
> "that only which belonged to him. Lands he
> "had previously granted were not his to
> "cede. Neither party could so understand
> "the cession."
>
> United States v. Percheman, 7 Pet. 51, 87.

> "As a matter of course, all laws, ordi-
> "nances, and regulations in conflict with the
> "political character, institutions, and con-
> "stitution of the new government are at once
> "displaced. Thus upon a cession of political
> "jurisdiction and legislative power—and the
> "latter is involved in the former—to the

"United States, the laws of the country in "support of an established religion, or "abridging the freedom of the press, or au-"thorizing cruel and unusual punishments, "and the like, would at once cease to be of "obligatory force without any declaration "to that effect; and the laws of the country "on other subjects would necessarily be "superseded by existing laws of the new "government upon the same matters. But "with respect to other laws affecting the pos-"session, use and transfer of property, and "designed to secure good order and peace in "the community, and promote its health and "prosperity, which are strictly of a munici-"pal character, the rule is general that a "change of government leaves them in force "until, by direct action of the new govern-"ment they are altered or repealed (Ameri-"can Insurance Co. v. Canter, 1 Pet. 542; "Halleck, International Law, ch. 34, sec. "14."

Chicago & Pacific Railway Co. v. McGlinn, 114 U. S., 542, 546.

The conquest of the territory of California did not, therefore, affect any vested interests in lands derived from the Mexican government, and the treaty of Guadalupe Hidalgo, did not impair such rights. On the contrary the United States, by that treaty, acknowledged and assumed the duty, imposed by the principles of general public law, of confirming the titles to lands which had been granted away by the Spanish or Mexican governments.

As was said by this court in the case of Langdeau v. Hanes, 21 Wall. 521, 527, referring to the cession by Virginia to the United States of its title to lands in the Northwest Territory:

> "It was for the confirmation of existing "possessions and titles, that the deed of ces- "sion stipulated, not the transfer of any new "title .* * * In this respect, she" (Vir- "ginia) "recognized the general rule of pub- "lic law, that by the cession of territory from "one state to another, public property and "sovereignty alone pass, and that private "property is not affected. * * * The "United States took therefore, the territory "ceded by Virginia bound by the established "principles of public law, to respect and pro- "tect all private rights of property of the in- "habitants of the country, and bound by ex- "press stipulation to confirm the possession "and titles of the French and Canadian in- "habitants and other settlers. * * *"

In the case of Hooker v. Los Angeles, already cited, it was contended by the plaintiffs in error that the decision of the state court against the validity of their claim to the rights of riparian owners and to the ownership of alleged percolating waters in lands embraced in one of the ranchos described in the bill herein, which rights were claimed to be derived from a patent of the United States and from confirmed Mexican grants, was a decision against a title, right, privilege or immunity claimed under the constitution, a treaty or statute of the United States, and that

such decision raised a federal question reviewable here. This court, however, said:

> "Obviously, the question as to the title or "right of plaintiffs in error in the land, "and whatever pertained thereto, was "one of state law and of general public "law on which the decision of the state "court was final. *San Francisco v. Scott, "111 U. S. 768; Powder Works v. Davis, "151 U. S. 389.* And the question of the ex-"istence of percolating water was merely a "question of fact".
>
> Hooker v. Los Angeles, 188 U. S. 314, 317.

And the court further held that the effect of the act of Congress of March 3, 1851, was not drawn in question by the decision of the state court against the claim of plaintiffs in error to the rights of riparian owners and to the ownership of alleged percolating waters in their lands, for the reason that the title asserted by them was derived from Mexican and Spanish grants, and, also, that the controversy respecting those claims did not involve the construction of the treaty of Guadalupe Hidalgo, but only the validity of the title of Mexican and Spanish grants prior to the treaty. This court also held, following its decision in the case of Crystal Springs Land and Water Co. v. City of Los Angeles, 177 U. S. 169, that where both parties to a suit claimed under Mexican grants, confirmed and patented

by the United States in accordance with the provisions of the treaty of Guadalupe Hidalgo, a controversy as to the nature and extent of the rights so granted and confirmed was not one arising under a treaty so as to confer jurisdiction on a federal court.

So, also, we submit, it is true that a controversy as to the nature and extent of the title or rights of the city as the successor of the pueblo in the pueblo lands and whatever appertained thereto, does not present a federal question.

In the case of San Francisco v. Scott, 111 U. S. 768, this court declared that the decision of the state courts of California, upon the question

> "Whether after the conquest * * * "and before the incorporation of the city of "San Francisco, and before the adoption of "constitution of the state of California, a "person exercising the functions of an al- "calde of the pueblo of San Francisco * * "could make a valid grant of pueblo lands,"

presents no federal question, the court saying:

> "That is a question of general public law, "as to which the decisions of the state court "are not reviewable here. This has been "many times decided."

The lands of the appellants never were part of the public domain and the United States never had any property rights therein. Their title to the land and their rights to the waters therein and to the waters of the Los Angeles river were derived from Spain and Mexico, and not from the

United States. No question therefore arises in this case as to what right or title passes under a patent of the United States for the reason that the patents issued by the United States to the predecessors of the appellants were not grants.

"They were simply, 'A record of the ac-
" 'tion of the government upon the title of
" 'the claimant as it existed upon the ac-
" 'quisition of the country'."

Beard v. Federy, 3 Wall. 478, 491.

"In the legislation of Congress, a patent "has a double operation. It is a conveyance "by the government when the government "has any interest to convey, but where it is "issued upon the confirmation of a claim of "a previously existing title it is documentary "evidence, having the dignity of a record, of "the existence of that title, or of such equi-"ties respecting the claim as justify its rec-"ognition and confirmation. The instrument "is not the less efficacious as evidence of pre-"viously existing rights because it also em-"bodies words of release or transfer from the "government."

Langdeau v. Hanes, 21 Wall. 521, 529.

"* * * The United States, in dealing "with parties claiming, under Mexican "grants, lands within the territory ceded "by the treaty of Mexico, never made pre-"tence that it was the owner of them. When, "therefore, guided by the action of the "tribunals, established to pass upon "the validity of these alleged grants, the "government issued a patent, it was in the "nature of a quit-claim—an admission that

"the rightful ownership had never been in "the United States, but had passed at the "time of the cession to the claimant, or to "those under whom he claimed. This prin-"cipal has been more than once clearly an-"nounced in this court."

Adam v. Norris, 103 U. S. 591, 593.

The fact that the United States, in issuing patents to the predecessors of the appellants, under the act of March 3rd, 1851, did not pretend that it was the owner of such lands, is shown by the provisions contained in the act, that patents issued thereunder shall be "conclusive between the "United States and said claimants only, and shall "not affect the interests of third persons." It may be further observed that the act is not drawn in question and made the subject of dispute merely because adverse claims are made to rights claimed thereunder.

"The validity of a statute is not drawn in "question every time rights claimed under "such statute are controverted, nor is the "validity of an authority every time such "authority is disputed."

Cook County v. Calumet & C. Canal & D. Co., 138 U. S. 653;

Blackburn v. Portland Gold Mining Co., 175 U. S. 571;

DeLamar's Nevada Gold Min. Co. v. Nesbitt, 175 U. S. 523.

If it be conceded that the rights of the predecessors of the appellants to their lands, and whatever appertained thereto, were protected by the treaty of Guadalupe Hidalgo, still, no controversy is shown by the bill to exist as to the construction of that treaty, for the reason that was stated by this court in the case of Phillips v. Mound City Land and Water Assn., 124 U. S. 605, namely, that the treaty

> "neither created the rights nor defined them; "their existence was not made to depend on "the constitution, laws or treaties of the "United States. There was nothing done "but to provide that if they did in fact ex- "ist under the Mexican law, or by reason of "the action of the Mexican authorities, they "should be protected. Neither was any pro- "vision made as to the way of determining "their existence. All that was left by im- "plication to the ordinary judicial tribunal. "Any court, whether state or national, hav- "ing jurisdiction of the parties and of the "subject matter of the action, was free to "act in the premises."

The doctrine announced in that case was sustained in California Powder Works v. Davis, 151 U. S. 395, which arose in the state court.

There, the respective parties each claimed under a different confirmed and patented Mexican grant, and the state court had found that one of the grants had been, by forgery, antedated. This court held that the determination of that fact was

within the province of the state tribunals, and that, although such determination limited the effect of the grant and the patent issued thereon, yet no federal question arose.

The appellants claim that the effect of the Spanish and Mexican grants under which they derived title was to vest in them the percolating waters, if any, in the lands granted; but whether this is true or not, depends, not upon the construction of the constitution or a law or treaty of the United States, but, upon the law of Mexico and of California, the construction of which is a matter exclusively for the state courts.

Hooker v. Los Angeles, 188 U. S. 314.

The Act of March 3, 1851, did not purport to apply to incorporeal rights, in the nature of the right claimed by the city, to take and use the waters of the river.

According to the allegations of the bill, the city's claim with regard to the waters of the river and the underground waters in the lands of appellants is not of the right to enter on those lands, but to take the surface water, presumably where the city may have the right to enter, and also to have the subterranean waters continue in their course through appellants' lands, until they reach the surface stream.

Regarding this right in its most enlarged sense, it is strictly incorporeal in its nature, and does not amount to more than a servitude or easement; but, as we shall show further on, the right, being derived under a general law, applying to all pueblos similarly situated in the present state of California, is a natural easement, like that of a riparian proprietor, and does not constitute an interest in land.

All usufructuary rights with regard to water are easements or servitudes.

Washburn on Easements and Servitudes, (4th Ed.) p. 136, marg. p. 73), pp. 144-5, (marg. pp. 80-1), p. 147, (marg. p. 83), pp. 2-3.

All aquatic rights are easements, and not *profits a prendre*.

Idem, p. 3, (marg. p. 4).

Jones on Easements, Sec. 55.

In the last cited section, it is said, with citation from Blackstone and other authorities, that water is not considered as a produce of the soil, like sand or other solid ingredient, nor like vegetation, unless it is confined in a cistern.

Being a moveable, wandering thing, and constantly renewing itself, so that the same drops do not continuously remain at any one place, running water is not the subject of ownership, and

only a usufructuary right can be obtained with respect thereto.

Kidd v. Laird, 15 Cal. 179-180;

Philadelphia v. Spring Garden, 7 Pa. St. 348;

Sec. 737, Jones on Easements.

The right to take coal in another man's land is an easement, but the ownership of the vein of coal itself is a corporeal right.

Washburn on Easements, p. 18, (marg. pp. 10-11), p. 147, (marg. p. 83).

The owner of an easement has neither the general property in nor seisin of the servient land; and from being something impalpable, such easements are classed with incorporeal hereditaments.

Washburn on Easements and Servitudes, 14th Ed. 18 (marg. 10).

The Act of March 3, 1851, contains no language which is susceptible of the meaning endeavored to be attributed to it in the bill of complaint.

The title of the act shows that it is for the purpose of ascertaining and settling private *land* claims.

In the first section, it is declared to be enacted for that purpose.

By section 8, it is provided that each and every person claiming *lands* in California, shall present the same for confirmation.

By section 9, the claimant or the district attorney is given the right to have the decision of the commissioners reviewed in the district court of the district in which the *land* is situated.

Section 13 provides that all *lands*, the claims to which have been finally rejected, and all *lands*, the claims to which shall not have been presented to the commissioners, shall be considered "as a part of the *public domain* of the United States."

By the same section, a patent is directed to be issued for all claims finally confirmed, upon the claimant's presenting to the general land office *a plat of survey of the land*, certified by the surveyor general, whose duty it shall be to cause all private claims which shall be finally confirmed, to be accurately *surveyed and to furnish plats of the same;* and the surveyor general, in the *location of the claims*, is given certain powers.

The same section further provides that, if the title of the claimant to such *lands* shall be contested by any other person, it shall be lawful for such person to present a petition to the district judge for the district in which the *lands* are *situated*, setting forth his title thereto, and the district judge is given authority to grant an injunction to restrain the party, at whose instance the claim to the *lands* has been confirmed, from suing out a patent until the title has been finally decided.

Section 14 contains provisions with regard to the presentation of claims to town lots, farm lots

or pasture lots, held under grant from any corporation or town, to which *lands* have been granted for the establishment of a town by the Spanish or Mexican government, and also with regard to city, town or village lots in cities, towns or villages existing on July 7, 1846, the claims for which are to be presented by the corporate authorities of the town; and in case of the existence of a city, town or village on that date, that fact is declared to be *prima facie* evidence of a grant to such corporation; and where any city, town or village was in existence at the time of passing the act, the claim for the *lands embraced within the limits of the same* is to be made by the corporate authorities of such city, etc.

It will thus be seen that there is not a word used which refers to incorporeal rights, but the act is expressly confined, by its terms, to lands, or corporeal property.

The provisions with regard to surveys and plats, which are essential to the issuance of a patent, are utterly inconsistent with the idea that it was intended that claims to incorporeal rights, (especially where not embracing the right of entry on lands), should be presented; and when the contention is made with regard to underground waters, which, of course, could not, in the nature of things, be interfered with, without entry on the lands, the climax of absurdity is reached.

How could a survey be made of the waters of a stream, which, in the course of years, naturally shifts its course so as to occupy a different channel, or at least occupy a different area of superficial space, in the different years, depending on rainfall and a variety of other circumstances?

How, too, could the limits of the *underground flow* be accurately determined so as to admit of the running of straight lines or angles?

Suppose that a survey of the channel or supposed channel of the river had been made, and the stream had subsequently changed its course and run across other land, not included in the survey; would not the city have lost its right to the river by reason of its not having been confirmed with respect to that land?

Would not the city have been limited by its patent to the land in the survey, and would not its failure to have additional land included therein have operated as a forfeiture, as regards this latter land, as much so as if no claim at all had been presented?

It certainly would not have been proper to include in the survey all lands, within the limits of which the stream could, by any possibility, have flowed in the future; for this might have included the whole country, when we take into consideration the changes in topography that are made by earthquakes, floods and other convulsions of nature.

The argument of *reductio ad absurdum* certainly applies with overwhelming force here.

The declaration of section 13, that all forfeited lands shall become part of the "public domain", is also utterly inconsistent with the inclusion of incorporeal rights, for that term has a special meaning in the land laws of the United States.

> " 'Public domain' is equivalent to 'public
> " 'lands,' and these words have a settled
> "meaning in the legislation of the country.
> "The word 'public lands' are habitually used
> "in our legislation to describe such as are
> "subject to sale or other disposal under gen-
> "eral laws."
>
> Barker v. Harvey, 181 U. S. 490 (45 L. ed. 968).

The language used is not reasonably susceptible of any other interpretation, we submit, than that it was intended that property, *capable of augmenting the area* of the public lands of the United States, should be *added thereto*, and that such property, of itself, should be of a character which would enable the government to devote it to the purposes to which government lands have been appropriated, namely, settlement and cultivation and final disposition on payment of fees or a price estimated according to acreage.

Section 14, too, expressly provides that claims are to be presented by municipalities, succeeding towns to which grants had been made by the former governments of Spain or Mexico, and

they are limited to *lands within the limits* of such municipalities.

The lands of appellants are all, admittedly, outside of the corporate boundaries of the city of Los Angeles, and, therefore, even if water rights were embraced in the term "land", as those involved in this case are not within the limits of the city, the claim therefor could not have been presented under this section.

This court, in several cases, has recognized and assumed that the act did not apply to incorporeal rights; the contention having been made in those cases that the act did not apply to the property under consideration because not tangible real property, and it was conceded, apparently without question or doubt, by both counsel and the court, that if the claim was for an incorporeal right, the act of 1851 did not apply.

We refer to the cases of:

Fremont v. United States, 58 U. S. 442, (15 L. Ed. 241);

Castillero v. United States, 67 U. S. 17, (17 L. Ed. 360);

Barker v. Harvey, 181 U. S. 481, (45 L. Ed. 963).

In the first mentioned case it was declared, as a ground for not considering the question of the sovereign right to mines in lands in California granted by the former government, that the land

commissioners had no jurisdiction of such a question.

In the Castillero case, the proposition of counsel, (who objected to the jurisdiction by the commission, under the act of 1851, to determine a claim to a mine) that the act did not apply to easements or servitudes, was conceded, and the court proceeded to show that the property, of which confirmation was asked in that case, viz., a title in fee simple to the New Almaden mine, being a piece of land embracing a certain superficial area, and extending from and including the surface down to the center of the earth, was a corporeal hereditament, and not a mere easement, and, therefore, that it was within the purview of the act.

In the case of Barker v. Harvey, *supra*, this court impliedly conceded that, had the right, involved in that case, been merely an easement or servitude, it need not have been presented for confirmation, and based their decision upon the proposition that the right was one of permanent and exclusive occupation of land, leaving no beneficial interest in the grantee of the Mexican rancho, in the midst of which the land was located.

In the case of Los Angeles v. Pomeroy, 124 Cal. 597, appellants expressly raised the point, that the City of Los Angeles had forfeited her rights, with respect to the river, by the failure to present a claim therefor under the act of March

3rd, 1851, but the State Supreme Court did not consider the contention of sufficient merit to refer to it in their opinion; and, afterwards, in the petition for rehearing the distinguished counsel for appellants, whose reputation for keen legal discernment and ability is second to none in California, made no reference to the point, apparently abandoning it.

Afterwards, when the case came before this court on writ of error, although the raising of a federal question was vital to maintaining the jurisdiction, the same counsel did not seem to think his former contention of enough weight to merit repetition, so that it was not presented to this court, and the case was dismissed for want of a federal question.

> Hooker v. Los Angeles, 188 U. S. 314 (47 L. ed. 487).

Moreover, if patents for confirmed Spanish or Mexican grants, under the act of March 3, 1851, had the effect of vesting in the patentee only such rights, with respect to waters, whether surface or subterranean, and whether a flowing stream or merely percolating waters, which belonged to such lands under the Spanish and Mexican law, in force at the time of the grants, then it is plain that servitudes and easements with respect to such waters did not have to be presented, for, otherwise, the failure to present claims therefor

for confirmation would have resulted in those rights passing by the patents for the grants.

That such patents vested in the patentee only such water rights as belonged to the grants by virtue of those laws, has been determined by this court in two cases involving the same waters which are in controversy here, that is, the surface and subterranean waters of the same river, though on different lands.

We refer to the cases of:

Crystal Springs Land & Water Co. v. Los Angeles, 177 U. S. 169 (44 L. Ed. 720);

Hooker v. Los Angeles, 188 U. S. 314 (47 L. Ed. 487).

In the first mentioned case, the opinion was one of affirmance, on authorities, by the court, without a discussion of the facts, but, by reference to the record, it will be seen that the appellants had sued in the United States Circuit Court, to quiet the title to waters, which they had developed in their lands and which were claimed by the city of Los Angeles to be a part of the Los Angeles river and owned by that city by virtue of its rights derived under its patent for pueblo lands and by virtue of the laws of Spain and Mexico governing the rights of pueblos to the waters of the streams on which they were located, and two of the patents, referred to in the bill of complaint in the case at bar, for the Ranchos Los Felis and San Rafael,

as well as the patent of the City of Los Angeles for its pueblo lands, were referred to in the bill in the former case, as being the foundation of the title of both parties, and it was claimed that the patents of the two ranchos had the effect of vesting in the appellants title to the underground waters in their lands.

The Circuit Court had dismissed the bill because no Federal question was raised by those allegations, as the questions concerning the rights of appellants were not created by the act of 1851.

The other case, of Hooker v. Los Angeles, involved the title to the surface and subterranean waters of the Los Angeles river in two of the ranchos mentioned in the bill of complaint in the case at bar, viz., the San Rafael and Providencia, and the same contentions were made in that case as in the Crystal Springs Land and Water Company case.

This court, in its opinion, in dismissing the writ of error to the Supreme Court of California, declared that the right of plaintiffs in error, in their land and whatever appertained thereto, was one of state law and of general public law, and did not involve the construction of the act of March 3, 1851; and further said:

> "The patents were in the nature of a quit-
> "claim, and under the act of March 3, 1851
> "(Sec. 15), were 'conclusive between the
> "United States and the said claimants only,
> "and shall not affect the interests of third

"persons.' The validity of that act was not "drawn in question in the state court, and "*as the right or title asserted by plaintiffs in* "*error was derived under Mexican and Span-* "*ish grants*, the decision of the state court on "the claims asserted by plaintiffs in error to "the waters of the river was not against *any* "*title or right claimed under* the constitution, "or any treaty, or *statute* of, or commission "held, or authority exercised, under the con- "stitution. If the title of plaintiffs in error "were protected by the treaty, still the suit "did not arise thereunder, because the con- "troversy in the state court *did not involve* "*the construction of the treaty, but the va-* "*lidity of the title of Mexican and Spanish* "*grants prior to the treaty.*"

The regulation of easements and servitudes and of natural rights in the waters of innavigable bodies, is a matter of state control, and the United States have no constitutional power over it.

Black's Pomeroy on Water Rights, Sec. 31.

The United States, with respect to their public lands in the states, occupy the position of a private owner, excepting that such lands cannot be taxed or their primary disposition interfered with.

Pollard v. Hagan, 3 How. U. S. 223 (11 L. Ed. 565);

Moore v. Small, 17 Cal. 199;

Lux v. Haggin, 69 Cal. 255.

The rights claimed by appellants, with regard to the waters in question, are based on the laws of the state, and not on those of the United States.

They claim a riparian right with respect to the stream, but this, if it existed, would be derived under the common law of riparian rights, which was adopted by the state of California in the general statute of April 13, 1850, declaring that that law should be the rule of decision in the state.

Had the civil law, which was previously in force in California, when the territory belonged to Mexico, been continued, appellants would have had to claim their rights under the latter law.

The Supreme Court of this state has decided in several cases, that, under the civil law of Mexico, the former pueblo of Los Angeles, of which the city is the successor, was vested with the paramount right to take and use all of the waters of the Los Angeles river, both surface and subterranean, which were needed for municipal purposes, and for the use of its inhabitants; and that this right passed to the appellee by its act of incorporation, passed April 4th, 1850 (Stats. 1850, p. 155). [Tr. fols. 37-8.]

Feliz v. Los Angeles, 55 Cal. 73;

Lux v. Haggin, 69 Cal. 328-9;

Vernon Ir. Co. v. Los Angeles, 106 Cal. 237;

Los Angeles v. Pomeroy, 124 Cal. 597.

But the rights claimed by the city, with respect to the waters mentioned in the bill of complaint, being derived under a general law, like riparian rights under the common law, are in the nature of natural easements and do not constitute an interest in land any more than those of riparian owners

"He (riparian proprietor) has no property in the water itself, but a simple usufruct while it passes along."

3 Kents Comm. marg. p. 439.

To the same effect are:

Jones on Easements, Sec. 737;
Hargrave v. Cook, 108 Cal. 72.

The riparian right, though in the nature of an easement, is not one in strictness, but is a natural right, not created by convention or prescription, and is not an interest in land.

Washburn on Easements and Servitudes, (4th ed.) 24 (marg. 16), 316, (marg 215);

Section 725, Jones on Easements.

A decree, quieting the title to one riparian tract against the owner of upper or lower riparian land, would not deprive the latter of his riparian rights, but would extinguish a true easement or servitude.

The city's title to the paramount right to the waters of the Los Angeles river exists under *a general law*, which prevailed in California up to April 13th, 1850, when the common law of England was adopted. (Stats. 1850, p. 219.)

This was the civil law, which provided that pueblos located on streams, should have the preferred right to the use of the waters thereof.

Lux v. Haggin, 69 Cal. pp. 313-334.

The rights of riparian owners were different under that law from what they are under the common law, as enlarged in California (to the extent of conferring the right to use water for irrigation), for, under the Spanish and Mexican regimes, the title to the waters of innavigable streams was vested in the sovereign, and prior appropriation, under prescribed regulations conferred on the appropriator the authority to divert those waters from riparian lands.

Lux v. Haggin, 69 Cal. pp. 313-334.

By the act of April 4th, 1850, (Stats. 1850, p. 155), the civil law, with respect to the right of the pueblo of Los Angeles, was continued in force by the declaration that the city of Los Angeles incorporated by that act, should succeed "to all the rights, claims and powers of the Pueblo de Los Angeles in regard to property."

The law of California, then, with reference to water rights in the Los Angeles river, is the pre-

viously existing civil law of Mexico, and, so far as relates to other water rights in the state, it is the common law, (except, as suggested in Lux v. Haggin, 69 Cal. pp. 323, 337-8, so far as rights had been fixed under the former government by actual appropriation).

The right of the city is in the nature of an enlarged riparian right, and, by it, riparian lands are not entitled to make as great use of the stream as they could under the extended common law of California.

Under the latter law, riparian owners are subject to the right of upper proprietors to take a part of the stream for irrigation, and to consume the whole flow for domestic use; and they cannot, as against lower riparian lands, divert the whole flow for irrigation, but are bound to permit a proportional part of the water to flow down to such lands.

Under the civil law, this riparian right was further limited by the requirement that all private owners should abstain from diverting the waters of streams, on which pueblos were founded, and by the power of those pueblos to divert those waters for the use of the municipality and its inhabitants.

We, therefore, contend that the construction to be placed upon the patents issued by the United States, under the act of March 3, 1851, to lands bordering on the Los Angeles river, in respect

to the rights of the patentees in the waters of that stream, must be left to the local law of the state of California. The local law of that state upon this subject is the law of Mexico as it existed at the time of the change of flags, except in so far as the same has been repealed or modified by the legislature of the state.

The disclaimers contained in the answer effectually remove any possible ground of Federal jurisdiction.

The appellants allege that they are the owners in fee simple, under Spanish and Mexican grants, of lands riparian to the river and assert ownership of riparian rights in the Los Angeles river and of all the waters oozing or percolating in their lands. They charge that the city claims to be the owner of all of the waters of the Los Angeles river, and its tributaries, and of all of the waters percolating and existing in their lands; that these claims are based in part on the treaty of Guadalupe Hidalgo and the act of Congress of March 3, 1851, and in part upon certain acts of the legislature and charters of the city, and that said acts and charters, in purporting to vest in the city the absolute ownership of the waters of the river, have the effect of depriving appellants of their property without due process of law and of impairing the obligation of the contract

created by the patents for the Spanish and Mexican grants in which their lands are located. [Tr. fols. 41-48.]

The answer of defendant denies that it rests its claim to the waters of the Los Angeles river, or to the waters in the lands of appellants upon the acts of the legislature or the charters mentioned in the bill, except in so far as these acts and charters may have had the effect of vesting in the city, the interest, if any, that the state of California had in those waters; but, on the contrary, the defendant disclaims having acquired, under any of said acts or charters, any waters or rights which were ever vested in the apellants or their predecessors. [Tr. fols. 70-80.]

This question was expressly decided by this court in the above mentioned case of Crystal Springs Land & Water Co. v. Los Angeles, 177 U. S. 160 (44 L. ed. 720), in which the same acts and charters were attacked as depriving the complainants of their rights with respect to the waters of the Los Angeles river without due process of law, and as impairing the obligation of the contracts created by the patents for the Ranchos Los Felis and San Rafael, referred to in the bill in the case at bar, and the answer in the former case made the same disclaimers as are made in the answer in the present case; and this court held that the answer was sufficient to

remove the federal question and oust th
Court of jurisdiction, if any was made by

In that case, too, appellants made the
jections to the sufficiency of the disclaime
raised in the brief of appellants on the
appeal.

The decision in the last mentioned c
followed and approved in the case of Bo
Mining Co. v. Montana Ore Co., *supra.*

We respectfully submit that the Circu
properly dismissed the bill for want of
tion and that the decree should be affirme

W. B. MATHEW
Solicitor for Ap

HENRY T. LEE,
J. R. SCOTT,
Of Counsel.

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Supreme Court of the United States.

No. 207.—October Term, 1905.

Robert Devine, Jesse D. Hunter, Asa Hunter, et al., Appellants, *vs.* The City of Los Angeles } Appeal from the Circuit Court of the United States for the Southern District of California.

[May 14, 1906.]

Complainants below, appellants here, are 244 in number and own in severalty various tracts of land aggregating several thousand acres, located in the county of Los Angeles, California, in Ranchos San Rafael, Los Felis, and Providencia. The Rancho San Rafael was granted by the King of Spain and the other two ranchos by the Republic of Mexico to the predecessors of complainants. The titles were confirmed, pursuant to the treaty of Guadalupe Hidalgo, to the successors of the original grantees by the Board of Land Commissioners created by and acting under an act of Congress approved March 3, 1851, entitled an act to ascertain and settle private land claims in the State of California. Patents were thereupon issued by the United States to the confirmees and it was alleged that these grants conveyed the title to the waters within them.

It was further alleged that the city of Los Angeles claimed to be the successor in right and title to all the grants made by the Spanish and Mexican governments to the Pueblo de Los Angeles, and the city filed a claim before the Land Commissioners in virtue of the general laws of Spain to sixteen square leagues of land, alleging that the said lands had been granted to the pueblo, which board confirmed the title of the city to four square leagues of land but rejected its claim to the remaining twelve square leagues, and that a patent was issued to the city by the United States for the land so confirmed, which patent did not refer to the river or its tributary waters, and did not purport to convey any of the waters of said river. That the city claimed the paramount right to the waters of the Los Angeles River and the river itself in virtue of the grants, laws, usages and customs of the Republic of Mexico and of the Kingdom of Spain, made and in vogue prior to the cession of the territory embraced within the State of California to the United States under the treaty of Guadalupe Hidalgo, and by virtue of certain acts of the legislature of the State of California referred to in the bill, and especially by virtue of an act of the

legislature of California passed April 4, 1850, incorporating the city of Los Angeles and declaring that it "shall succeed to all the rights, claims, and powers of the Pueblo de Los Angeles in regard to property, and shall be subject to all the liabilities incurred, and obligations created, by the ayuntamiento of said pueblo."

It was further alleged that the city never procured the confirmation of any rights in the waters of the Los Angeles River other than those that passed under the grant of land conferred by the patent, and that the act of the legislature, passed April 4, 1850, and certain other acts of the legislature and proceedings, acts and charters of the city set forth in the bill, are a cloud upon complainants' title to their lands. That the Los Angeles River runs through the three ranchos and thence through the city; that complainants' lands are riparian to the stream; that underlying complainants' lands are percolating waters which do not constitute a part of the river, but which by reason of the patents referred to, and mesne conveyances, belong to the several complainants as owners of said lands. The bill then went on to aver that the city claims that it is the owner of the river and its tributaries and their waters, passing through the ranchos named, and of the percolating waters in complainants' lands; that it claims the right to appropriate said waters for the use of the city and its inhabitants, and that complainants have no right to take any of the surface waters of the river or the percolating waters except in subordination to the city's paramount right to take and use the same, and that the city threatens and intends to institute suit in the State courts of California to enjoin complainants from using any of the waters possessed by them from wells on their lands.

That the city rests its right and claim to the river and its waters upon a certain construction of the treaty of Guadalupe Hidalgo and of the act of Congress of March 3, 1851, and upon certain acts of the California legislature and certain charters of the city of Los Angeles adopted and approved in pursuance of an erroneous construction of the treaty and the act of Congress; the acts and charters being enumerated.

It was further alleged that under said acts and said charters the city has asserted and assumed the right to take physical control of the Los Angeles River and its tributaries, and has exercised the right of obstructing ditches and other conduits maintained by owners of land in the valley of the river above the city and of preventing the use of the waters of the river for irrigation of the lands of complainants, and that said laws and charters and the exercise of said rights have resulted in the destruction of the values of the lands. And it was charged that the acts of the legislature and the charters of the city of Los Angeles were in violation of the Fourteenth Amendment to the Constitution of the United States, in that

they deprived or attempted to deprive complainants of their property without due process of law and to grant the same to the city of Los Angeles; that the acts and charters impaired the obligation of the contracts expressed in the patents of the United States to complainants' lands; and that the assertion and exercise by the city of the right to control the river and its waters were in violation of section 1979, Title XXIV, of the Revised Statutes of the United States.

And the bill further averred that the construction of the act of Congress of March 3, 1851, upon which the defendant city rested its right and claim to said river and to said waters, is erroneous, and that, according to the proper construction thereof, the city was required to present to the Board of Land Commissioners its claim to the waters of the river for confirmation.

It was also alleged that the claims and threats of the city to institute actions against complainants and the control which it has exercised over the river and the waters thereof, and the several acts of the legislature of California and the charter of the city purporting to confer title to the river and its waters upon the city as the successor to the Mexican pueblo, cast a cloud upon the titles of complainants to their lands, and had, in large measure, destroyed the market values thereof.

It was prayed:

1. That a decree be granted complainants removing the cloud cast by the city of Los Angeles upon their titles to the lands described in the bill, and that the acts of the legislature of the State of California and the charters of the city be declared invalid in respect to conferring upon the city any rights in the waters of the Los Angeles River acquired from the pueblo of Los Angeles, other than such rights as were ascertained and confirmed under the act of March 3, 1851.

2. That a decree be granted to complainants and each of them quieting their several titles to their lands and to the waters therein, and to the riparian right of each of them to use the waters of said river, as against the paramount title claimed by said city to have been derived from Spain or Mexico, or claimed to have been derived from or to be supported by said acts of the legislature of the State of California, or by the charter of said city; and also that it be decreed that complainants and the city have each and severally such title only derived from Spain and Mexico as was confirmed and patented to them or their predecessors by the act of Congress of March 3, 1851.

3. That a decree be granted to complainants forever enjoining the city of Los Angeles from setting up or asserting such paramount right and title to said waters; and further enjoining said city from asserting and exercising dominion or control over said river and said waters under or by virtue of said acts of the legislature or said charter of said city of Los Angeles.

It was alleged in the answer that by the terms of each of the grants to the three ranchos named in the bill, and by the laws of the Government making the same, all of the waters within any of the lands embraced in said ranchos, which formed a part of or found their way into the surface or subterranean stream of the Los Angeles River, were excepted and reserved in favor of the pueblo of Los Angeles, and that none of said waters were confirmed or granted by the United States to complainants' predecessors.

It was admitted that the city claimed to be, and it was alleged that the city was, in fact, the successor to all the rights and grants made by the Spanish and Mexican Governments to the pueblo of Los Angeles.

The answer further alleged that the patent issued by the United States to the city of Los Angeles purported to grant to the mayor and council of the city of Los Angeles all appurtenances belonging to the land therein granted, which included all the waters of the river and the right to the use of the same.

It was admitted that the city claimed the paramount right to the waters of the Los Angeles River, by virtue of grants, laws, usages and customs of the Republic of Mexico and the Kingdom of Spain and the act of the legislature approved April 4, 1850, mentioned in the bill, but it was denied that these were the only sources of title through which the city claimed; and alleged that it also claimed said paramount right by virtue of long-continued use and possession of said river and the waters thereof for the period of more than one hundred and twenty years, and by various grants and conveyances from private individuals, and by virtue of various judgments and decrees of courts of competent jurisdiction and of the patents to the mayor and common council of the city of Los Angeles, mentioned in the bill, and also by virtue of its ownership of various tracts of land, which are riparian to said river, amounting in area to more than four thousand acres, embracing the land through which the river flows in passing through the lands included in said patent.

The answer disclaimed that the city acquired, under the act of the legislature passed April 4, 1850, any right to the Los Angeles River, or the water thereof, or any other water or right which was, at the time of the passage of said act, vested in the predecessors of complainants, or any private individual or corporation.

The answer denied that the acts of the legislature, or the proceedings or acts or charter of the city, referred to in the bill, constituted any cloud upon complainants' titles, but, on the contrary, alleged that none of complainants had, at the time of the commencement of the suit, or have now, any right or interest in or to the waters of the Los Angeles River, save in subordination to the paramount right of the city to take and use all of the waters of said river to the extent of the necessities of the city or its inhabitants.

The answer alleged that all of the waters underlying complainants' lands form and constitute a part of the Los Angeles River, and would, if not intercepted, reach the surface stream of the river at a point above the northern boundary of the city, and denied that any of said waters belonged to the several complainants, or that they, or any of them, have ever had any ownership of said waters, save in subordination to the paramount right of the city to take and use said waters, so far as it and its inhabitants might need the same.

It was denied that in the petition of the mayor and common council of the city of Los Angeles to the Board of Land Commissioners for confirmation of the pueblo lands, no claim was made to the waters of the Los Angeles River, and alleged that the Board of Land Commissioners, in its finding and judgment confirming the claim of the city to the pueblo lands, also confirmed its claim to the rights with respect to the waters of the river which were possessed by the pueblo; and it was admitted that the city of Los Angeles had in the past claimed and still claimed to be the owner of all the waters of said river, and of its tributaries, from its sources of supply to the southern boundary of the city, and also of all of the waters existing in complainants' lands, and of the waters under said lands; and it was alleged that all of the waters in those lands did in fact constitute a stream or watercourse, and were part of the waters of the Los Angeles River. The city admitted that it claimed that complainants had no right to pump the waters in their lands, because such pumping might ultimately have the effect of reducing the supply in the surface and subterranean river, and it was denied that they were percolating waters, and also denied that the city claimed the right to enter on the lands of any of complainants to take or use said waters, or any part thereof, without having first obtained the right so to do, by grant from or condemnation against said complainants. It was admitted that the city claimed the right to prevent complainants from using the waters in their lands when the city had need of the same, but denied that it claimed the right to prevent complainants from using said waters by entering upon their lands or by using physical force, and alleged that the city claimed the right to prevent the use of said waters by complainants only in the manner prescribed by the laws of the State of California, and that the city intended to enforce its rights against complainants by means of the suit brought by it, as alleged in the bill, in the State court against certain of the complainants, for the purpose of enjoining them from using the waters pumped by them from their lands, and by means of other legal process, and not by any unlawful acts or physical force.

It was admitted that the city rested its claim to the Los Angeles River and the waters thereof, including the waters in the lands of complainants,

in part upon the treaty of Guadalupe Hidalgo, according to the manifest meaning thereof, viz., that the rights of pueblos were intended to be protected by said treaty, as well as the rights of individuals; and it was admitted that the city rested its claim in part upon the act of Congress of March 3, 1851, according to the manifest meaning thereof, viz., that the claims of pueblos and of municipal corporations succeeding them to lands granted by the Spanish and Mexican Governments were entitled to confirmation, and that the confirmation thereof had the effect of confirming all water rights which were appurtenant to said lands, and that said act did not require claims for property other than lands to be presented for confirmation.

It was denied that the city rested its claim to the Los Angeles River and its waters, including the waters in the lands of complainants, upon the laws of the State of California and the ordinances and charters of the city of Los Angeles, except to the extent that the same had the effect of vesting and continuing in the city and its predecessors such rights with respect to the waters of the Los Angeles River as were possessed by the pueblo at the time the pueblo was dissolved and the city was incorporated by the act of April 4, 1850, and such rights with respect to the waters of the river as might have been vested in the State of California upon its admission to the Union.

It was expressly disclaimed that there was granted by said acts of the legislature, or by the city charter, to the mayor and common council of the city of Los Angeles any right to develop waters percolating under the bed of the Los Angeles River or elsewhere, which at the time of the passage of said acts, or at the time of the adoption of said charter, was vested in the complainants, or any of them, or in their predecessors, or in any private individual or corporation.

It was alleged that the legislative acts and the ordinances and charters mentioned in the bill were adopted with the intention of asserting that the city of Los Angeles was the owner of all the rights possessed by the pueblo of Los Angeles to the waters of the Los Angeles River, and not with the intention of depriving complainants, or any of them, or any of their predecessors, or any other private individual or private corporation, of any right in respect to the waters of said river; and denied that by any of said acts of the legislature mentioned in the bill, or by the charter of the city or the amendments thereof, there was intended to be granted to the city any right with respect to the water, flowing in said river or beneath the surface of the bed thereof, which was then vested in complainants, or any of them, or any of their predecessors, or any private individual or private corporation, or that by any of said acts it was intended to divest any

private person or corporation of any vested private rights in said waters, or that any of said acts had ever been construed by any court in the State of California to so divest any such private vested rights, but on the contrary it was alleged that it had been determined by the Supreme Court of California that said acts did not have such effect.

The answer denied that the city had ever interfered with the appellants in the use of the waters of the river or its tributaries, or the waters of said valley, except when such waters were located on or in the lands of the city or on or in lands on which the city had acquired the right of entry to divert and use said waters, except when the city has interferred with such use by judgments of court obtained by due process of law, and denied that the city has ever assumed or asserted the right to take physical control of any waters on or in complainants' lands. It was disclaimed that the acts or charters referred to in the bill granted to the city the right to take physical control of property belonging to complainants.

The answer denied that the acts of the legislature and the ordinances and charters of the city of Los Angeles, mentioned in the bill, or any of them, were in violation of the Fourteenth Amendment, or impaired the obligation of contracts, or were in violation of section 1979, Title XXIV, of the Revised Statutes of the United States.

The answer alleged that according to the proper construction of the act of March 3, 1851, the confirmation and patent therein provided for only had the effect of confirming to the confirmee and patentee the lands therein described, but subject to all the easements and servitudes imposed thereon by the laws of Spain and Mexico in favor of third parties, including the rights to the waters of unnavigable streams which were attached to other lands, or belonged to pueblos or private individuals other than the grantees. And where such water rights were appurtenant to lands granted by the Spanish and Mexican Governments and confirmed and patented under said act of Congress, such water rights passed by such patents, and a claim for such water rights was not required by such act to be confirmed or patented.

It was admitted that the city claimed that complainants had no right to the waters of the Los Angeles River, including the waters in other lands, as against the city and its inhabitants, when the city shall determine that it needs said waters, and that the city claims that the use by the complainants of such waters is at the sufferance of the city, and may be prohibited by the city at any time, and that the city is threatening to institute suits against complainants for the purpose of enforcing such claims, but it is denied that any and all said claims or any dominion or control which the city has exercised over the river and the waters thereof has cast any cloud upon the several titles of complainants to their lands or affected the market value or salability of such lands.

It was alleged in the answer that in the year 1781 a pueblo was founded on the site of the present city of Los Angeles by the government of the Kingdom of Spain, and that, according to the laws and regulations of that country, said pueblo became entitled to the sole and exclusive right in perpetuity to the absolute ownership of all the waters of the Los Angeles River, whether flowing upon or beneath the surface of the ground; that said river then rose and now rises several miles above the site of the pueblo and ran and still runs down through said site to the lands now embraced within the city of Los Angeles; that during the whole of the occupation and control of said pueblo by the Spanish and Mexican Governments the municipal authorities at all times exercised control of and claimed the exclusive right to use all the waters of said river, and that right was during all of said time recognized and acknowledged by the owners of all of the lands bordering on said river, including the predecessors of complainants; that ever since the occupation and control of said pueblo by the United States and by the State of California the municipal authorities of the city have exercised the same rights over and to the waters of the river as were previously exercised and claimed by the authorities of the pueblo, and that such control and rights were exercised and claimed for the purpose of irrigation and for the domestic and other uses of said pueblo and said city and the inhabitants thereof.

It was further alleged that within one year after the foundation of the pueblo the municipal authorities thereof constructed a system of irrigation works and conveyed the waters of the river to and upon lands in the pueblo, and that thereafter from time to time other lands of the pueblo were brought under irrigation, so that all of said waters were diverted from said river and used for such irrigation during a period of many years prior to the conquest of California by the United States, and that, from and after such conquest, the same use was made of the waters of the river for the irrigation of lands within the pueblo and for domestic use of its inhabitants up to the time of the passage of the act of April 4, 1850, incorporating the city of Los Angeles; that from and after that time the municipal authorities of said city continued to construct additional works for the more economical diversion and distribution of such waters for use in irrigating lands within said city and for domestic use of the inhabitants thereof; that within the past eighteen years nearly all of said irrigable lands have been divided into building lots and covered with houses, so that all of the waters previously used for the irrigation of said lands, excepting the portion thereof which has been diverted by complainants within the last five years, have been used by the city and its inhabitants for purposes other than for irrigation, and all of the waters of said river during the dry season of each year, extending from the first day of May

to the first day of November, and a great portion of said waters during the rest of the year, have been needed for said uses. That the population of said city is not less than 180,000 people, and is increasing at the rate of more than 10,000 per year, and that the city has no other source of water supply except said river.

It was alleged that, with certain exceptions referred to therein, the pueblo of Los Angeles, from the time of its foundation in the year 1781, up to the incorporation of the pueblo as a city by the act of 1850, and the said city from that time until now has continuously, exclusively and adversely to the whole world used all of the waters of the Los Angeles River under a claim of ownership of said waters, the exceptions referred to being claims made by certain persons at various times of rights to the use of the waters of the river and of affluents thereof, which have been litigated and decided by the State courts in favor of the city, and it was further alleged that within the past twelve years certain owners of lands in which flowed underground waters of the river have set up a claim that said waters were not a part of the river and that they were entitled to take and appropriate said underground waters for their own use, and that, in pursuance of such claims, great numbers of said parties, including some of complainants, had constructed wells and engaged in pumping large quantities of said water, thereby diminishing the surface flow of the river, and that it was for the purpose of preventing such diminution that the city was bringing and contemplated bringing the actions against complainants referred to in the bill; that within the past five years such abstraction of these underground waters did not interfere with the supply of water required by the city, but within the past three years the amount of diversion by means of said wells has increased so much and the needs of the city and its inhabitants have also so greatly increased that the waters of the river which reached the surface stream thereof and the underground diversion works of the city have not been sufficient to supply it and its inhabitants with the water needed by them.

It was also alleged that the city in its corporate name or in the name of the board of water commissioners is the owner of numerous tracts of land which are riparian to the river, and which are particularly described in the answer. And further, that in the year 1879 two actions were commenced by predecessors of some of complainants against the city of Los Angeles, claiming the right to divert and use waters of the river, and both of said actions were finally determined by the Supreme Court of the State of California against the plaintiffs and in favor of the city, and it was alleged that complainants, who are successors in interests of the plaintiffs in the suits last mentioned, are by said judgments estopped to deny that the city is the owner of a paramount right to use so much of the waters of the Los Angeles River as it and its inhabitants may need.

Thereafter the city of Los Angeles, by its counsel, moved the court to dismiss this cause on the ground that it appeared that the court had no jurisdiction thereof, which motion was sustained and the bill dismissed, whereupon the cause was brought here on certificate.

Mr. Chief Justice FULLER delivered the opinion of the Court:

There being no diversity of citizenship, the jurisdiction of the Circuit Court could only be maintained upon the ground that the suit arose under the Constitution or laws or treaties of the United States, and a suit does not so arise unless it really and substantially involves a dispute or controversy as to the effect or construction of the Constitution or some law or treaty of the United States, upon the determination of which the result depends. And this must appear from the plaintiff's statement of his own claim, and cannot be aided by allegations as to the defenses which might be interposed.

Complainants prayed for a decree quieting their title to the lands described in the bill, but the averments did not bring the case within the classes of bills of peace or to quiet title, recognized by the usual chancery practice as succinctly stated in *Boston &c. Mining Company* v. *Montana Ore Company*, 188 U. S. 632. It was apparently framed under section 738 of the California Code of Civil Procedure, providing that "an action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim." This statute enlarged the ancient jurisdiction of courts of equity in respect of suits to quiet title, but, the equitable rights themselves remaining, the enlargement thereof may be administered by the Circuit Courts of the United States as well as by the courts of the State. *Broderick's Will*, 21 Wall 503; *Holland* v. *Challen*, 110 U. S. 15; *Gormley* v. *Clark*, 134 U. S. 348.

It seems, and it has often been held by the Supreme Court of California, that in an action under this section it is not necessary that the complaint should allege the nature of the estate or interest claimed by the defendant. *Head* v. *Fordyce*, 17 Cal. 151; *Castro* v. *Barry*, 79 Cal. 443; *Mining Company* v. *Mining Company*, 83 Cal. 587.

We are dealing with the question of the jurisdiction of the Circuit Court, and the general rule as to that is thus stated by Mr Justice Peckham, speaking for the court, in *Boston Mining Company* v. *Montana Ore Company*, 188 U. S. 632:

"It would be wholly unnecessary and improper in order to prove complainant's cause of action to go into any matters of defense which the defendants might possibly set up, and then attempt to reply to such defense, and thus, if possible, to show that a Federal question might or probably would arise in the course of the trial of the case. To allege such defense

and then make an answer to it before the defendant has the opportunity to itself plead or prove its own defense is inconsistent with any known rule of pleading, so far as we are aware, and is improper.

"The rule is a reasonable and just one that the complainant in the first instance shall be confined to a statement of its cause of action, leaving the defendant to set up in his answer what his defense is.

* * * * * *

"The cases hold that to give the Circuit Court jurisdiction the Federal question must appear necessarily, in the statement of the plaintiff's cause of action, and not as mere allegations of the defense which the defendants intend to set up or which they rely upon. *Third Street Railway Company* v. *Lewis*, 173 U. S. 457."

Tested by this rule, we are of opinion that, as a bill to quiet title, the jurisdiction of the Circuit Court cannot be sustained by reason of the allegations that defendant's adverse claims are based on an erroneous construction of the treaty of Guadaloupe Hidalgo, the act of March 3, 1851, and the acts of the legislature of California, and ordinances and charters of the city of Los Angeles, enumerated, as clearly shown hereafter.

But complainants, appellants here, deny that the present case was brought under section 738, and say that the bill was one to remove clouds from complainants' titles, that is to say, clouds created by claims and threats, and by the several acts of California, including defendant's charters, which complainants ask to be declared invalid.

We do not understand, however, that a bill will lie to dispel mere verbal assertions of ownership as clouds on title, or, invoking equity interposition on the ground of the removal of clouds, that decrees may be sought adjudging statutes unconstitutional and void. If it were true that the statutes and charters referred to in the bill were unconstitutional as alleged, they were void on their face, and could not constitute a cloud on complainants' titles.

The test as to when a cloud is or is not cast, as stated by Mr. Justice Field, then Chief Justice of California, in *Pixley* v. *Huggins*, 15 Cal. 127, and reasserted in *Hunnewinkle* v. *Georgetown*, 15 Wall. 547, is undoubtedly applicable, and demonstrates that the assertion of unconstitutionality cannot be resorted to to maintain Federal jurisdiction as constituting a cloud. The averment of unconstitutionality in such circumstances is a mere pretext to obtain that jurisdiction.

According to the bill, complainants' titles were derived from Spain and Mexico by virtue of grants to their predecessors from those countries, which were confirmed by the Board of Land Commissioners. The State of California was not in the line of such titles, so that the acts of the legislature and the charters of the city complained of manifestly did not have the effect of depriving complainants of their property or of impairing the obligation of any contract, but simply conferred on the city such rights in respect of the waters of the river as may have been vested in the State.

Hooker v. *Los Angeles*, 188 U. S. 314, was a suit brought by the city to condemn a tract of land riparian to the Los Angeles River, and embraced in one of the ranchos described in the present bill. It originated in the Superior Court of the County of Los Angeles under the title of *City of Los Angeles* v. *Pomeroy*, was carried to the Supreme Court of the State, and there affirmed. 124 Cal. 597, 637, 638. It involved the question of the respective rights of the city and of the defendants to the water of the Los Angeles River. The State Supreme Court said:

"No act of the legislature . . . can diminish or change the rights of the defendants in these lands derived from their predecessors, the Mexican and Spanish grantees. . . . The defendants hold their lands as successors to several Spanish and Mexican grantees, under patents from the United States based upon the original grants. They claim that, even conceding the rights of the pueblo and the city's succession to those rights, (a concession which they make only for the purposes of the argument on this point,) they are still, by virtue of their ownership of the lands in question, entitled to the exercise of full riparian rights, except so far, and so far only, as those rights are impaired by the paramount rights of the pueblo as they existed before the change of flag and without any legislative additions thereto.

"This claim, we think, is clearly just. The legislature of California could grant nothing to the city of Los Angeles which belonged to others, and the rights of the city, as successor to the pueblo, in the lands of riparian proprietors holding under Mexican and Spanish grants, cannot exceed the rights of the pueblo itself."

The case was brought here on writ of error, and we said:

"And so as to certain statutes of the State of California, which declare that the city of Los Angeles is vested with the paramount right to the surface and subterranean water of the Los Angeles River. Those statutes were admitted in evidence merely to show that the city was the successor of the ancient pueblo. The court held that the right of the city of Los Angeles to take from the Los Angeles River all of the waters of the river to the extent of its reasonable domestic and municipal needs was based on the Spanish and Mexican law, and not on the charters of the city of Los Angeles. The validity of the statutes, on account of repugnancy to the Federal Constitution, was not drawn in question in the trial court nor in the Supreme Court of the State, and both courts held that they neither granted to the city nor took away from plaintiffs in error any rights or property."

This being so, the averments of deprivation or impairment afforded no proper basis for jurisdiction, and as to section 1979 of the Revised Statutes, that was inapplicable. *Holt* v. *Indiana Manufacturing Co.*, 176 U. S. 68.

In truth, the questions as to the nature and extent of complainants' titles or rights, as put forward in the bill, are not Federal questions, but questions of State or general law.

In *Hooker* v. *Los Angeles*, *supra*, it was contended that the decision of the State court against the claim of plaintiffs in error to certain riparian rights and in certain alleged percolating waters, which rights were alleged to

be derived from a patent of the United States, and confirmed Mexican grants, was a decision against a title, right, privilege, or immunity claimed under the Constitution or some statute or treaty of the United States, and so reviewable here. But this court held otherwise, and we said:

"Obviously, the question as to the title or right of plaintiffs in error in the land, and whatever appertained thereto, was one of State law and of general public law, on which the decision of the State court was final. *San Francisco* v. *Scott*, 111 U. S. 768; *Powder Works* v. *Davis*, 151 U. S. 389. And the question of the existence of percolating water was merely a question of fact.

"The patents were in the nature of a quitclaim, and under the act of March 3, 1851, were 'conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.' The validity of that act was not drawn in question in the State court, and as the right or title asserted by plaintiffs in error was derived under Mexican and Spanish grants, the decision of the State court on the claims asserted by plaintiffs in error to the waters of the river was not against any title or right claimed under the Constitution, or any treaty, or statute of, or commission held, or authority exercised, under the Constitution. If the title of plaintiffs in error were protected by the treaty, still the suit did not arise thereunder, because the controversy in the State court did not involve the construction of the treaty, but the validity of the title of Mexican and Spanish grants prior to the treaty."

Crystal Springs Land and Water Company v. *Los Angeles*, 177 U. S. 169, was a bill brought in the Circuit Court for the Southern District of California, and that court ruled, 82 Fed. Rep. 114, that where both parties claimed under Mexican grants, confirmed and patented by the United States in accordance with the provisions of the treaty of Guadeloupe Hidalgo, and the controversy was only as to what were the rights thus granted and confirmed, the suit was not one arising under a treaty so as to confer jurisdiction on a Federal court, and that where the only ground of Federal jurisdiction was the allegation that defendant's claim of title was based in part on certain acts of the legislature of the State, which attempted to transfer to it, as alleged, the title held by complainant's grantors at the time of their passage, the court would not retain jurisdiction when an answer was filed by defendant denying the allegations, and disclaiming any title or claim of title not held by it before the passage of the acts. The bill was dismissed, and we affirmed the judgment.

We there cited, among other cases, *Phillips* v. *Mound City Association*, 124 U. S. 605, and *Robinson* v. *Anderson*, 121 U. S. 522. In the one case it was adjudged, as stated in the syllabus, that "an adjudication by the highest court of a State that certain proceedings before a Mexican tribunal prior to the treaty of Guadalupe Hidalgo were insufficient to effect a partition of a tract of land before that time granted by the Mexican Government to three persons who were partners, which grant was confirmed by commissioners appointed under the provisions of the act of March 3, 1851,

9 Stat. 631, 'to ascertain and settle the private land claims in the State of California,' presents no Federal question which is subject to review here."

In the other, that under the act of 1875, even if the complaint, standing by itself, made out a case of jurisdiction, it was taken away as soon as, when the answer came in, it appeared that defendants either disclaimed all interest in the land in question, or claimed title under and not adverse to that of plaintiff. See also *Boston etc. Mining Company* v. *Montana Ore Company*, 188 U. S. 632, 643. There are the same disclaimers here as in the Crystal Springs case, but from what we have heretofore said it will be seen that we are of opinion, in any aspect, that the bill was properly dismissed, and that the decree to that effect must be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.